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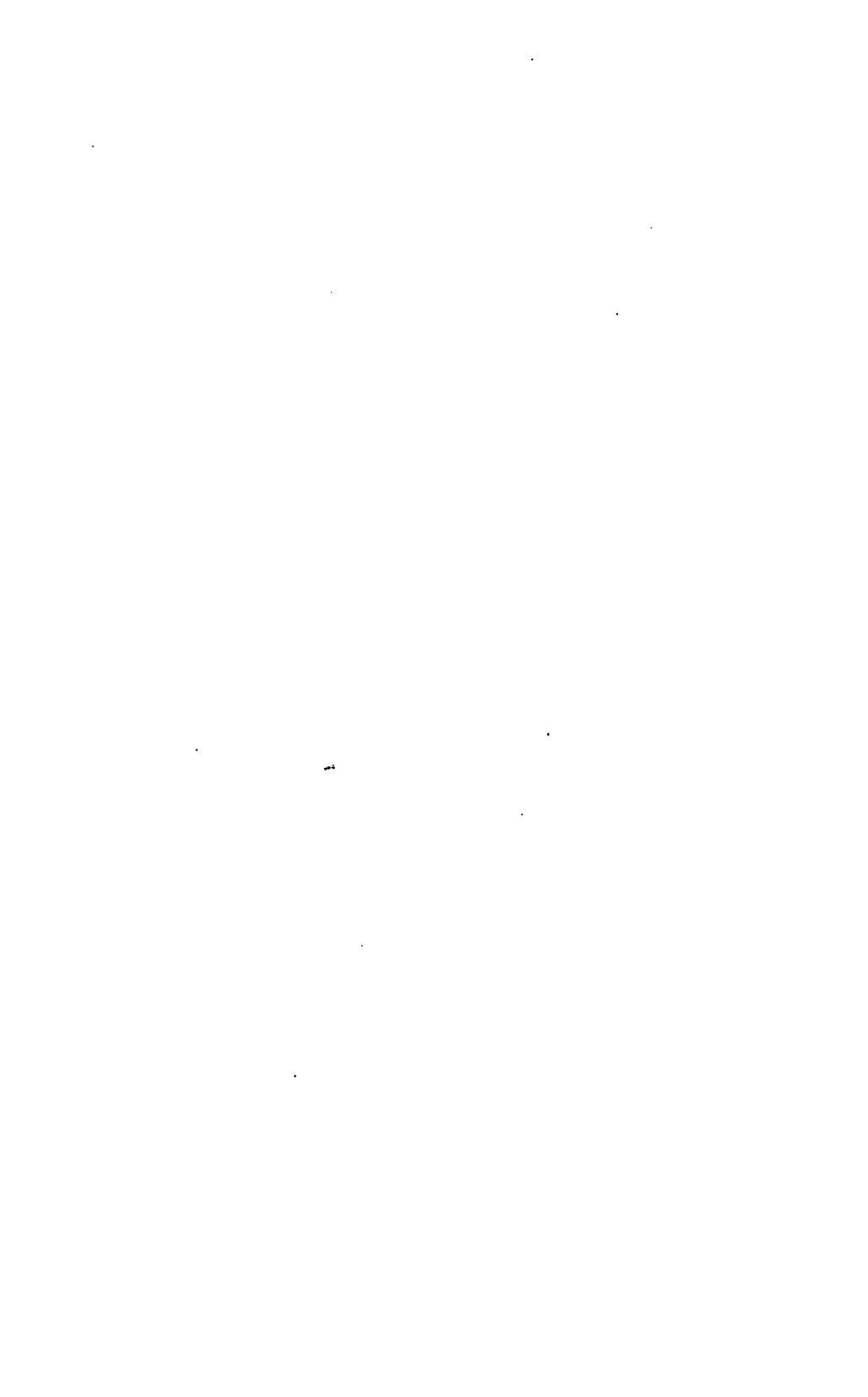
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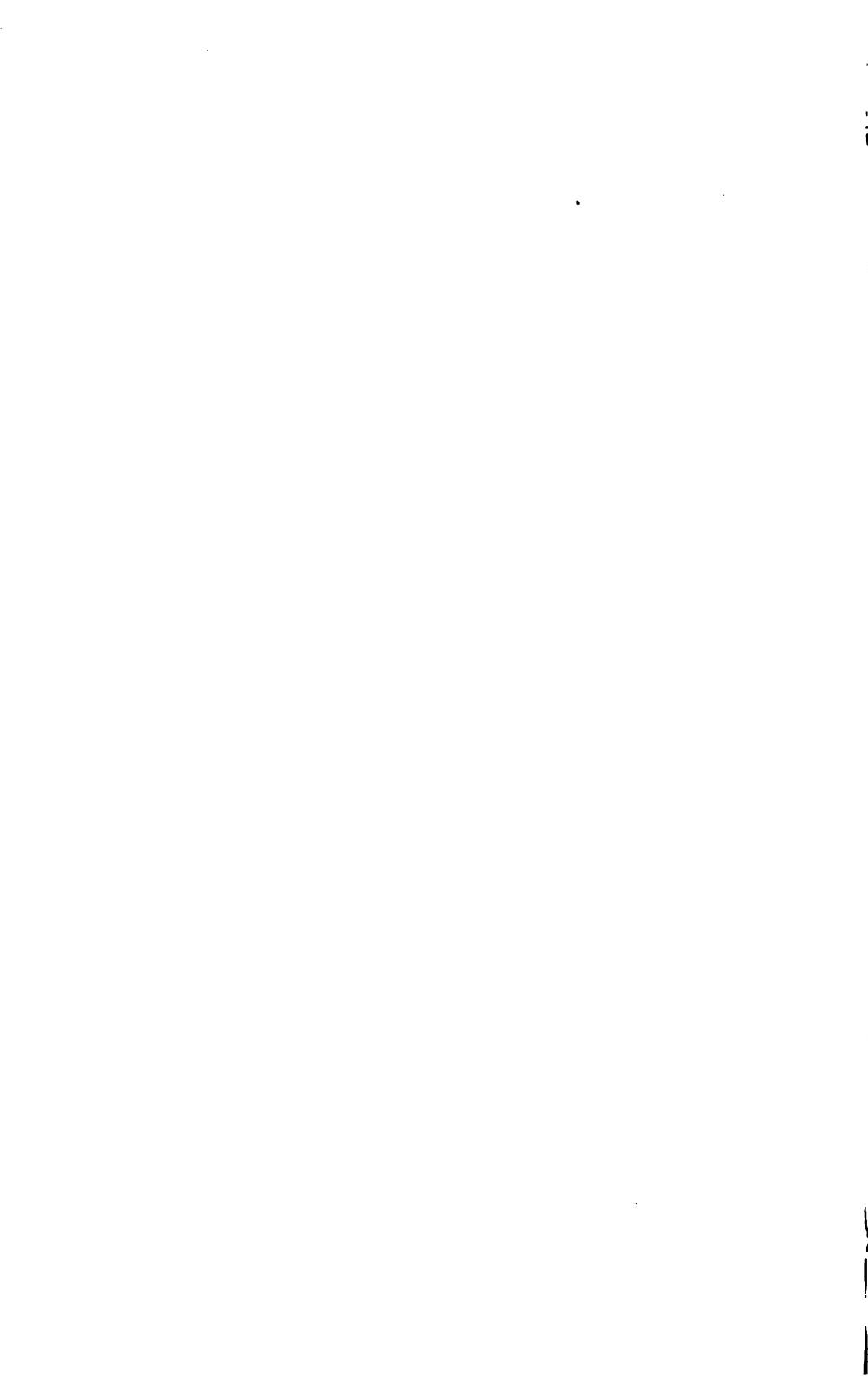
FROM

The Commission

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# **REPORT**

**OF THE**

## **PUBLIC SERVICE COMMISSION**

**FOR THE FIRST DISTRICT**

**OF THE**

**STATE OF NEW YORK**

**For the Year Ending December 31, 1908**

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**Vol. II.**

**Orders, Opinions and Reports**

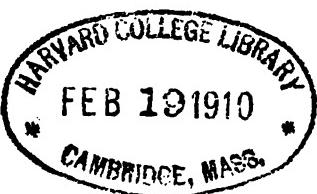
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# STATE OF NEW YORK

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No. 15.

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## IN SENATE

JANUARY 11, 1909.

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### REPORT OF THE PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT.

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NEW YORK, January 11, 1909.

*Honorable HORACE WHITE, Lieutenant Governor:*

*Honorable JAMES W. WADSWORTH, JR., Speaker of the Assembly:*

SIRS.—The Public Service Commission for the First District of the State of New York herewith transmits to the Legislature its annual report for the year ending December 31, 1908.

Respectfully yours,

WILLIAM R. WILLCOX,

*Chairman.*

WILLIAM McCARROLL,  
EDWARD M. BASSETT,  
MILo R. MALTBIE,  
JOHN E. EUSTIS,

*Commissioners.*



## TABLE OF CONTENTS.

### VOLUME II.

	PAGE
Resume of Proceedings had before the Public Service Commission for the First District in 1907, including Opinions of Counsel and Commission rendered in said Proceedings.....	9
 Opinions and Reports of 1907 not heretofore published:	
Annual Budget of the Commission.....	48
Brooklyn Bridge — Extent of Jurisdiction of Commission over.....	49
Brooklyn Bridge — Regulation of Vehicular Traffic during rush hours.....	50
Additional Subways for Manhattan and the Bronx.....	51
Fourth Avenue Subway, Brooklyn.....	55
Section 9-0-5, Loop Lines — Pipe Galleries.....	60
Rapid Transit Subway Construction Company — Clearing up streets in Brooklyn.....	61
Condemnation Proceedings under the Rapid Transit Act.....	63
Metropolitan Street Railway Company — Proposed Line from Manhattan Post Office to Williamsburg Bridge Plaza.....	65
New York Central and Hudson River Railroad Company — Increase of Rates.....	65
 Opinions of Counsel, 1907:	
Accidents — Reporting — Commissions for the first and second districts — Public Service Commissions Law, Sections 2, 5, 47.....	66
Reports of Accidents filed with the Commission not open to inspection — Public Service Commissions Law, Section 47.....	66
Acknowledgment by Corporations of the Receipt of Certified Copies of Orders of the Commission — Public Service Commissions Law, Section 23.....	67
Electricity Rates — Discrimination — Discontinuance of Service — Transportation Corporations Law, Sections 65, 66; Public Service Commissions Law, Section 72.....	67
Electricity — Fixing Rates — Complaints — Public Service Commissions Law, Sections 66, 71.....	68
Electricity — Fixing Rates — Investigations — Public Service Commissions Law, Sections 45, 66, 71.....	69
Electric Current — Sale of, in Cases in Which Manufacturer does not Use Public Property.....	70
Express Companies — Discrimination and Preference — Fifty-dollar Clause in Contract as affecting Adjustment of Liability — Public Service Commissions Law, Sections 31, 32, 35.....	71
Free Transportation Prohibited, Except under Contracts for Rapid Transit Railroads in New York City — Public Service Commissions Law, Sections 15, 33; Railroad Law, Sections 169, 170; New York State Constitution, Article 13, Section 5.....	72
Grade Crossings — Action Required by the Commission — Matter of the Grade Crossing of the Long Island Railroad Company and the Sea Beach Railroad Company at Sixty-fifth Street between Fourth and Fifth Avenues, Brooklyn — Railroad Law, Sections 60, 61.....	73
Jurisdiction of the Commission over the Municipal Ferry operated between Manhattan and Richmond — Words "Include," "Common Carrier," defined — Public Service Commissions Law, Sections 1, 2, 25-27, 29-40, 45-55.....	75
Jurisdiction — Commission for the First District — Ferries included in Railroad — Public Service Commissions Law, Section 2.....	84

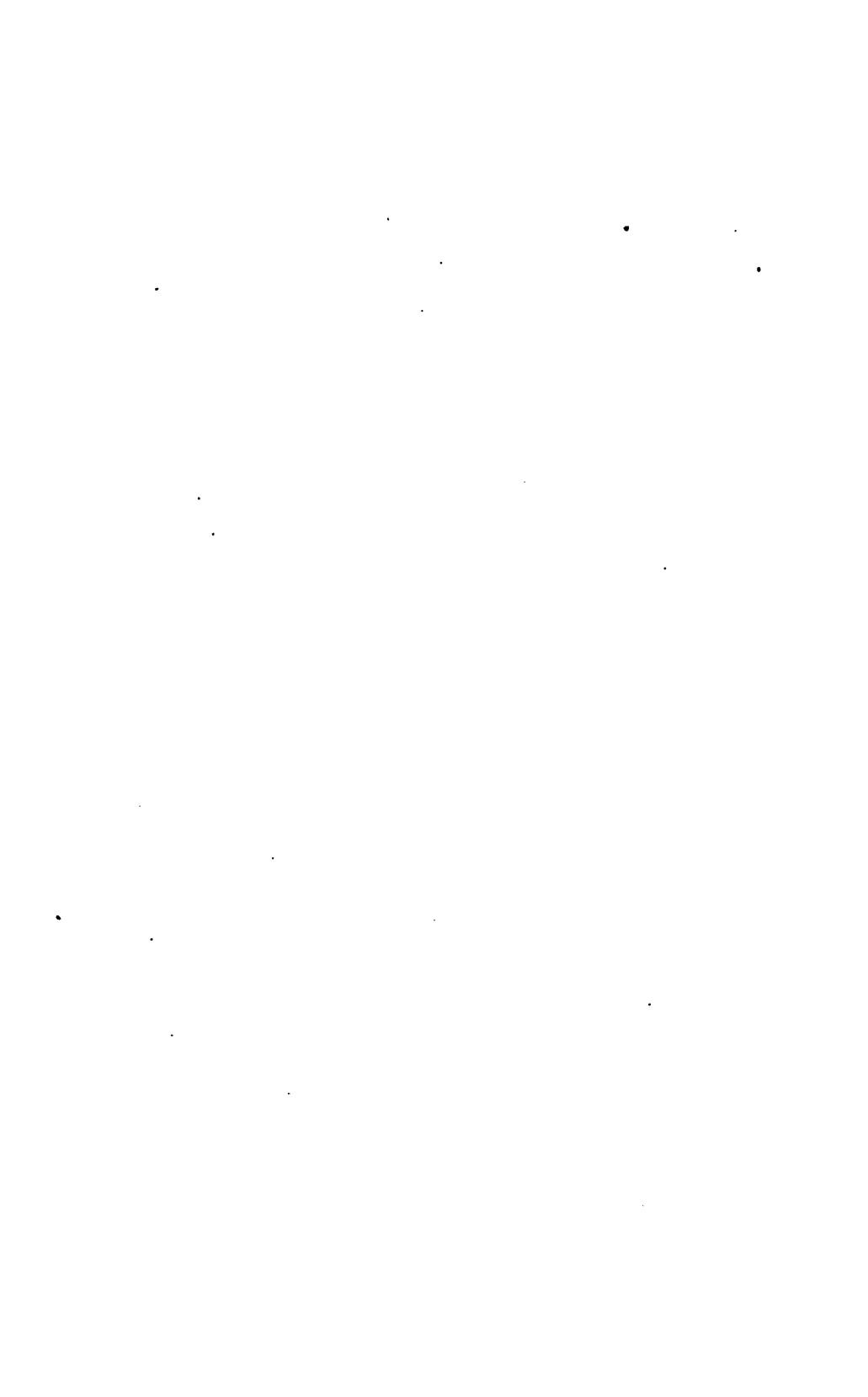
## TABLE OF CONTENTS.

	PAGE
Jurisdiction over Common Carriers — "Doing Business Exclusively" — Filing Schedules — Public Service Commissions Law, Sections 2, 5.....	84
Commission may Rescind Resolution Adopting Rapid Transit Route passed by Board of Rapid Transit Railroad Commissioners — Methods of Constructing Subways — Rapid Transit Act, as amended by the Elsberg Law. Modification of Subway Contracts — Consents Necessary — Changes in Route — Rapid Transit Act, Sections 4, 5, 37, 38.....	85
Construction and Operation of Flatbush Avenue Subway Extension as an Extension of Contracts Nos. 1 and 2 —Rapid Transit Act, Sections 32a, 38. Contract for Subway Construction — Bridging Excavation in street in front of Nos. 605-607 Fulton Street, under requirement by Commission, must be considered Extra Work.....	86
Ducts for Cables used to convey Electricity for Manhattan-Bronx Subway are part of Construction, not of Equipment, though built apart from Subway Wall.....	88
Subway Construction — Access to Buildings for the Purpose of Shoring.....	91
Subway Construction — Duty of Contractor to Support Structure on east side of Mott Street, although Erected after making Contract.....	93
Occupation of Street by Structure Containing Boilers and Compressed Air Machinery for Use in Subway Construction — Power of the Commission to Grant Permit Therefor.....	94
Relocation of Water Pipes on Permit issued by the Commission but not Submitted to the Department of Water Supply for Approval.....	95
Vaults in Fulton Street, Brooklyn, taken by Condemnation for Subway Purposes — Rights of Abutting Owners as to Restoration.....	96
Stipulation not to Tear Down Wall at Wall Street Station of Subway without Five Days Notice to Owner.....	97
Application for Privileges of Window in Subway Wall, — Procedure.....	98
Bond — Substitution of, by Rapid Transit Subway Construction Company in Place of \$1,000,000 Cash Deposited under Contract No. 2, not allowable — Rapid Transit Act, Section 38; L. 1906, Ch. 472, Section 14.....	99
Bond — Substitution of Bond of United States Fidelity and Guarantee for one of Lawyers' Surety Company, as Surety for American Bridge Company, as Sub-contractor under Contract No. 1.....	100
Violation of Eight Hour Law by Contractor for Subway Construction, Labor Law, Sections 3, 13.....	101
Lease of Permanent Offices by the Commission Not to be Submitted to the Commissioners of the Sinking Fund — Designation of Newspapers for Rapid Transit Advertisements — City Charter, Sections 149, 217; Public Service Commissions Law, Section 10; Rapid Transit Act, Sections 36, 37..	103
Steinway Tunnel — Position of Commission Concerning Operation.....	104
Steinway Tunnel — Resume of Rights of Company and Pending Litigation Affecting .....	104
Pennsylvania Tunnel — Jurisdiction of Commission.....	107
Jurisdiction of the Commission over the Subway of the Hudson and Manhattan Railroad Company — Noise at Night in Work of Construction — Public Service Commissions Law, Section 48.....	108
Orders issued in Proceedings had before the Commission in 1908 including Opinions of Counsel and Commission rendered in said proceedings.....	109
Complaint Order, Blank Form of.....	109
Extension Order, Blank Form of.....	110
Hearing Order, Blank Form of.....	110
Applications for permission to issue stocks, bonds and securities.....	111
Applications for certificates of convenience and a necessity.....	161
Applications for approval of changes of motive power.....	168
Applications for permission to lay new or additional tracks and construct extensions.....	172
Applications for approval of agreements, contracts and leases.....	183
Other applications by companies.....	190
Grade crossings .....	199
Short Notice Tariff Orders.....	212

## TABLE OF CONTENTS.

7

	PAGE
Franchise matters not arising on specific applications of companies.....	216
Rates, fares and charges.....	230
Annual and other reports and information required to be filed by corporations.....	262
Subway matters.....	321
Safety precautions and devices.....	367
Matters relating mainly to number of cars operated.....	397
•Matters relating mainly to manner of operation.....	505
Matters relating mainly to service and equipment.....	561
Nuisances.....	567
Overhauling and repair of cars.....	585
Repair of tracks, switches and cross-overs.....	619
Extensions and relocation of lines by order of the Commission.....	627
Stations.....	631
Paving.....	667
High tension systems.....	678
Inspection of records, power plants and equipment of street railroad corporations.....	689
Investigation into the general condition of railroads, street railroads and common carriers.....	691
Appraisal of property of street railroad corporations in the Boroughs of Manhattan and the Bronx.....	692
Matters relating to gas and electrical companies other than rates.....	692
Investigation into the property, franchises and operation of electric lighting corporations.....	716
Labor Law violations.....	718
Violations of orders and penalty suits.....	719
Receivers.....	727
Locomotive boiler tests.....	729
Accounts of the Commission.....	735
Miscellaneous matters.....	735



# **RESUME OF PROCEEDINGS HAD BEFORE THE PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT IN 1907, AND OPINIONS OF COUNSEL AND COMMISSION RENDERED IN SAID PROCEEDINGS.**

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## **Railroad Corporations, Street Railroad Corporations and Common Carriers.— Filing reports of accidents.**

Filing Order No. 1, issued July 30, 1907, p. 682, 1907 Rep.

Opinion of Counsel, August 8, 1907, p. 581, 1907 Rep.

Memorandum on delays in reporting and resolution.

Opinion of Counsel, September 6, 1907, p. 594, 1907 Rep.

## **JURISDICTION OF THE COMMISSION FOR THE FIRST DISTRICT— RAILROADS OTHER THAN STREET RAILROADS.**

### **OPINION OF COUNSEL.**

I am in receipt of your letter bearing date August 3, transmitting a communication from Ralph Peters, president and general manager, respecting Order No. 1, covering the New York and Rockaway Beach Railway Company, the New York, Brooklyn and Manhattan Beach Railway Company, and the Glendale and East River Railroad Company, in which you note that it seems significant that Mr. Peters has not included the Long Island Railroad in the list of companies for which he has given written acceptance. You ask me to suggest a proper answer in this matter.

I would suggest that you write to Mr. Peters, that inasmuch as by the provisions of the Public Service Commissions Law, the Public Service Commission for the First District is given jurisdiction over the Long Island Railroad, in so far as concerns the construction, maintenance, equipments, terminal facilities, local transportation facilities and local transportation of persons or property within the First District, and is directed to investigate the cause of all accidents and to require railroad corporations to give notice of every accident happening upon any line of railroad operated within the territory over which the Commission has jurisdiction, it will be necessary for the Long Island Railroad to give written acceptance of Order No. 1, and to make to this Commission the report therein required.

Dated August 8, 1907.

### **DELAY IN REPORTING ACCIDENTS.**

\*[Delays of from 53 minutes to 2 hours and 43 minutes in reporting accidents are in violation of an order requiring that they be reported immediately.]

The order covering reports of accidents, among other things, provided:

"Every common carrier, railroad corporation and street railroad corporation over which this commission has jurisdiction, is hereby required to give notice to this commission of every accident happening upon any line of railroad or street railroad, owned, operated or leased by it, in the following manner:

"First. In case of

- " I. Accident resulting in death or serious injury to persons;
- " II. Collision resulting in serious damage to cars;
- " III. Derailment of elevated or subway trains or railroad passenger trains; or
- " IV. Serious interference with or stoppage of traffic.

"Such notice shall be given by telephone immediately after the happening of the accident, or, if the accident happens after 11 o'clock P. M., then at 8 o'clock A. M. of the following day, and such notice shall give the nature and location of the accident or event."

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\*The head notes and other matter preceding opinions and reports were not parts of the opinions or reports as made and printed in the minutes of the Commission. They have been added for the convenience of the reader and form no part of the actual decision in any case.

There are included with the opinions and reports some of the opinions of counsel, which have been regarded as settling particular questions covered by such opinions.

10 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

The Secretary offered a memorandum with regard to the records of accidents by the companies upon whom the order of the Commission was served, showing that certain companies made delays in the telephone reports as follows:

"The average delay of each company in recording accidents, covering the six days, August 12 to 17, inclusive, from the exact time of the happening of the accident to the telephonic report to this office was as follows:

Brooklyn Heights Railroad Company, 1 hour and 12 minutes.  
Coney Island and Brooklyn Railroad Company, 1 hour and 15 minutes.  
Interborough Rapid Transit Company, 2 hours and 15 minutes.  
New York Central and Hudson River Railroad, 1 hour and 53 minutes.  
New York City Interborough Railway Company, 53 minutes.  
New York City Railway Company, 2 hours and 23 minutes.  
New York and Queens County Railroad Company, 1 hour and 7 minutes.  
Union Railway of New York City, 2 hours and 43 minutes." The average delay of all companies reporting was 1 hour and 41 minutes."

Thereupon the following resolution, offered by Commissioner Eustis, was adopted August 29, 1907:

*Resolved*, That the Secretary be directed to write to the corporations that have failed to comply with Rule 4 in not reporting accidents immediately, calling their attention to their delay and asking them to explain why they have been so delinquent.

**ACCIDENTS — NOTICE OF — RAILROAD TERMINALS, ETC.— PUBLIC SERVICE COMMISSIONS LAW, SECTIONS 47 AND 86.**

**OPINION OF COUNSEL.**

I am in receipt of your letter bearing date September 3d, inquiring as to whether you should have the order requesting reports of accidents served on the Pennsylvania Railroad, Delaware, Lackawanna and Western, and railways of that description which have ferry terminals or freight yards in the First District.

I have considered a provision of section 86 of the Public Service Commissions Law, to the effect that nothing in the acts contained should be deemed to apply to or operate upon interstate or foreign commerce.

I think, nevertheless, that such railroads as you mention are within the jurisdiction of the Commission in respect of their terminal facilities; that they are subject to the provisions of section 47 of the Public Service Commissions Law, and that the order mentioned should be served upon them and that reports pursuant thereto required from them respecting accidents happening within the territory of the First District.

Dated, September 6, 1907.

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**Railroad Corporations, Street Railroad Corporations and Common Carriers— Filing copies of accounts, records and memoranda — Uniform system of accounts.**

Filing Order No. 2, issued July 8, 1907, p. 683, 1907 Rep.

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**Gas and Electrical Corporations.— Filing copies of accounts, records and memoranda — Uniform system of accounts.**

Filing Order No. 3, issued July 8, 1907, p. 683, 1907 Rep.

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**Railroad Corporations, Street Railroad Corporations and Common Carriers.— Filing copies of accounts, records and memoranda, relating to movements of traffic and schedules and other traffic data.**

Filing Order No. 4, issued July 8, 1907, p. 683, 1907 Rep.

**Union Railway Company of New York City.—Dangerous location of trolley poles on Jerome avenue in the Bronx.**

Complaint Order No. 5, issued July 18, 1907, p. 684, 1907 Rep.  
Matters complained of satisfied; case closed.

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**Brooklyn Rapid Transit Company, Interborough Metropolitan Company, Metropolitan Securities Company.—Investigation into general condition.**

Order No. 6, issued July 18, 1907, p. 684, 1907 Rep.  
Order No. 12, issued September 29, 1907, p. 689, 1907 Rep.  
Order No. 17, issued September 29, 1907, p. 690, 1907 Rep.

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**Union Railway Company of New York City and Westchester Electric Railroad Company.—Operation of Williamsbridge cars to the city limits.**

Complaint Order No. 7, issued July 29, 1907, p. 685, 1907 Rep.  
Hearing Order No. 20, issued September 13, 1907, p. 690, 1907 Rep.  
Opinion of Commissioner Eustis.  
Final Order No. 45, issued October 25, 1907, p. 705, 1907 Rep.  
Final Order No. 63, issued November 1, 1907, p. 717, 1907 Rep.

**OPINION OF COMMISSION.  
(Adopted October 25, 1907.)**

**COMMISSIONER EUSTIS:**

"Mr. Chairman, I have another matter to report on a hearing. There was a complaint made some time ago by various people in the upper part of The Bronx against the Union Railway Company in stopping a certain line of cars, the Williamsbridge cars, at Two Hundred and Thirty-third street, while formerly they had continued them to the city line at Two Hundred and Forty-second street. There has been a hearing on that matter, we have taken testimony, and believe that the complaint is well founded, and unjust to the people, and I wish to submit the following report and order:

Order No. 45 was thereupon adopted requiring the company to operate its Williamsbridge line of cars to the City line.

---

(Separate final orders were issued after Complaint Order No. 7 and Hearing Order No. 20, viz.: Final Orders Nos. 46 and 62 relating to service on Bedford Park and New Rochelle Express Line and Final Orders Nos. 45 and 63 relating to the operation of Williamsbridge cars to the city limits.)

**Union Railway Company of New York City and Westchester Electric Railroad Company.—Service on Bedford Park and New Rochelle express line — Transfers.**

Complaint Order No. 7, issued July 29, 1907, p. 685, 1907 Rep.  
Hearing Order No. 20, issued September 13, 1907, p. 690, 1907 Rep.  
Opinion of Commissioner Eustis.  
Final Order No. 46, issued October 25, 1907, p. 706, 1907 Rep.  
Final Order No. 62, issued November 1, 1907, p. 717, 1907 Rep.

## 12 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

### OPINION OF COMMISSION.

(Adopted October 25, 1907.)

#### COMMISSIONER EUSTIS:

"I have also, Mr. Chairman, another report to make against the same company on the complaint made by the people in the upper part of The Bronx, against the Union Railway Company. They run a certain number of cars between One Hundred and Twenty-eighth street and New Rochelle, on which they charge a separate fare and refuse to take transfers. This also was considered by the Committee of the Whole, and I would like to make an order, which is as follows:"

Order No. 46 was thereupon adopted requiring

As to the operation in the First District on Webster avenue, Olin avenue and White Plains road, in the city of New York, of the Bedford Park and New Rochelle express cars, as follows:

1. That the Westchester Electric Railroad Company shall, in the city of New York, issue to its passengers on said cars transfer slips for further transportation in a continuous trip in the said city upon the cars of the Union Railway Company at One Hundred and Ninety-eighth street, Bedford Park, and at the terminus of the Williamsbridge car lines on White Plains road; that said Union Railway Company shall, at said places, accept from the said passengers said transfer slips for such further transportation in said city; that the said Union Railway Company shall, at the said places, issue to its passengers transfer slips for further transportation in a continuous trip in said city upon said Bedford Park and New Rochelle express cars, and that said Westchester Electric Railroad Company shall, at said places, accept on said Bedford Park and New Rochelle express cars from said passengers such Union Railway transfer slips for the said further transportation in said city.

All in the same manner and to the same extent as said companies issue to and accept from each other transfer slips at said places in respect of any other car or line of cars and without discrimination against or preference to any.

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### Street Railroad Corporations.—Filing of corporate documents.

Filing Order No. 8, issued August 2, 1907, p. 686, 1907 Rep.  
Opinion of Commissioner Bassett.

### FILING OF CORPORATE DOCUMENTS.

\*[Railroad companies will not be relieved from the order of the Commission requiring the filing of copies of deeds in their chain of title, although compliance requires the filing of copies of two thousand deeds, but time for compliance will be extended as necessary.]

The Commission had adopted an order requiring the various street surface, elevated and subway railroads in the district to file copies of various franchise documents including deeds and other documents in the chain of title. The Long Island Railroad Company asked to be allowed to omit from among the documents to be supplied to the Commission deeds and other documents in the chain of title.

### OPINION OF COMMISSION.

(Adopted August 26, 1907.)

#### COMMISSIONER BASSETT:

On August 19, 1907, the undersigned was appointed a committee of one to investigate the report upon the subject-matter of the letter dated August 14, 1907, from the Long Island Railroad Company, a copy of which is attached. I have taken up the matter personally with Messrs. Keaney and Haff of the Long Island Railroad Company. It appears that the deeds to that company within Greater New York would number about two thousand. These are practically all deeds of the fee simple of land. Probably this is a larger number than run to any other corporation in this city, certainly larger than any number in the boroughs of Brooklyn and Queens. After hearing their statement, I told them that I did not think the Commission would be willing to make an exception in their case, although we appreciated that it placed an especially large task upon them. The discussion was then limited to determining an order in which various deeds should be pro-

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\* See footnote, page 9.

vided, for instance, deeds of lands now within streets, deeds of easements, etc., but as nearly every deed conveys property now within mapped street lines, even though the street may not be opened, it would seem to make an unnecessary amount of labor to differentiate between the classes of deeds. Most of these deeds will need to be procured from the Queens county clerk's office, which is about four months behind in its work. The Kings county register's office is even more behind. I pointed out that the respective clerks would charge as much for preparing and certifying copies as they would for certifying them alone. This being the case they thought that it would be best to throw the entire task upon the Queens county clerk and the Kings county register, and pay the legal fees. If they do this, it will require considerably more than a month to comply with our order in this regard.

It was brought out in the course of the conference that on Atlantic avenue this corporation operates under a lease, and has no deeds. The deeds will be found to run to the Brooklyn and Jamaica Railroad Company, beginning about 1832. The Atlantic Avenue Railroad Company, now under control of the Brooklyn Rapid Transit, and the Nassau Electric Railroad Company, under the same control, have to do with the title along Atlantic avenue, and in the course of time request should be made upon these three companies for information.

I therefore report that, in my opinion, the Commission should not comply with the request of the Long Island Railroad Company, but should, from time to time, as it may be found necessary, extend the time for supplying these deeds upon proof being furnished that the order of this Commission is being complied with by them as rapidly as possible.

The following resolution was adopted:

*"Resolved*, That the report of Commissioner Bassett be received and the recommendations therein contained be adopted."

August 26, 1907.

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### Railroad and Street Railroad Corporations and Common Carriers.

#### — Filing corporate documents.

Order No. 8A, issued September 12, 1907, p. 692, 1907 Rep.  
(Published in 1907 Report as Order No. 22.)

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### Nassau Electric Railroad Company.—Petition for consent to construct an extension.

Final Order No. 9, issued August 13, 1907, p. 687, 1907 Rep.

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### New York City Railway Company.—Service on Fourth and Madison avenue line.

Hearing Order No. 10, issued August 29, 1907, p. 688, 1907 Rep.  
Opinion of Commissioner Maltbie.

Final Order No. 52, issued October 28, 1907, p. 710, 1907 Rep.  
Case not closed in 1907, see page 623 herein.

\* [Wages, hours of labor, and conditions of employment of motormen and conductors are under the control of the street railroad companies and may be changed by them so as to attract men to the service. It is not, therefore, any excuse for not rendering adequate service that under present conditions a sufficient number cannot be secured.]

\* See footnote, page 9.

14 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

OPINION OF COMMISSION.

(Adopted October 28, 1907.)

COMMISSIONER MALTBY:

Upon August 29 the Commission adopted an order directing that an inquiry be held upon September 16 to determine the adequacy of the service and equipment of the New York City Railway Company upon the line currently called "the Madison avenue line." In accordance therewith a hearing was held and evidence taken upon September 16, and continued upon September 23 and September 26, at which time the Commission received notice that Mr. Adrian H. Joline and Mr. Douglas Robinson had been appointed receivers for the company by Judge Lacombe of the United States Circuit Court. An adjournment was then taken for the purpose of notifying the receivers of the hearing and of giving them an opportunity to be present personally or by counsel. Such notice, stating in full the matters to be inquired into and the specific directions in which the service might be improved, was served upon the receivers upon October 5.

Upon October 9 the hearing was resumed and the Counsel to the Commission presented a communication from the receivers transmitting a memorandum of instructions to the receivers issued by Judge Lacombe. This memorandum (page 140 of evidence of October 9) addressed to the receivers, advised them that it would not be necessary for them to appear before the Commission. The receivers accepted this view and did not appear at any of the hearings, although the officers and counsel of the New York City Railway Company did appear and presented testimony. Subsequent hearings were held upon October 14 and October 16, at which time the hearing was closed at the request of the company, full opportunity having been given to it to present all of the data it desired to submit (see pages 142, 166 and 200 of evidence of October 9).

The evidence taken at the hearings was given by Mr. M. H. Ryan of the engineering staff of the Commission, and Mr. Oren Root, vice-president and general manager of the New York City Railway Company. Mr. Ryan, with the assistance of a number of other engineers from the staff of the Commission, had made a careful and thorough investigation of the service and equipment of the line and of the vehicular traffic, extending over a number of days in July, August and September, and presented a summary of this investigation in the form of tables and diagrammatic charts, which were placed in evidence and appear among the exhibits. Ample opportunity was given to the counsel for the street railway company to examine this evidence and to cross-examine Mr. Ryan, but the opportunity of cross-examination was not availed of.

"The Madison avenue line" extends from One Hundred and Thirty-fifth street and Madison avenue, as its northern terminal, to Ann street, Broadway and Park Row, as its extreme southern terminal. A short branch runs from Fourth avenue west on Astor place to Broadway. From its northern terminus the line runs down Madison avenue to Forty-second street, through Forty-second street to Fourth avenue, down Fourth avenue and the Bowery to Broome street, through Broome street to Centre street, down Centre street and Park row to Ann street. The up-town cars follow the same route, except that they pass through Grand street, from Centre street to the Bowery and thence up the Bowery. During the evening rush hours some of the cars turn off from Forty-second street into Vanderbilt place, through Vanderbilt place to Forty-fourth street and through Forty-fourth street to Madison avenue. Not all of the cars upon this line are run from the extreme northern to the extreme southern terminus; a number are switched back at One Hundred and Sixteenth street and others at Eighty-sixth street. Certain runs also terminate at Astor place, others at the Brooklyn Bridge, and only a few go through to Ann street.

No other cars pass over this line between One Hundred and Thirty-fifth street and Forty-second street, except the Eighty-sixth street crosstown cars which pass over the same tracks between Eighty-fifth and Eighty-sixth streets. Three lines use the same tracks on Forty-second street, between Madison and Fourth avenues; two other lines use the Fourth avenue tracks between Forty-second street and Twenty-third street, one branching off at this point and the other continuing down to

Delancey street, where it turns east to the Williamsburg Bridge. Two crosstown lines run over the same tracks on Grand street. All these facts are important because of the difficulty of running more cars over a portion of the line during rush hours.

The critical points upon this line, from the viewpoint of a possible increase in service, are three: Forty-second street, between Madison and Fourth avenues, and the intersections of Twenty-third street and Fourth avenue, and of Grand street and the Bowery. The first two points affect all of the cars run over the line, the last only those running below Astor place.

Mr. Root urged, as one reason why a better service had not been given, that it was impossible to pass a greater number of cars through these points than had been sent through, but he afterwards modified it (page 19 of evidence of September 16), to say that these limitations applied only to the rush hours between 5 and 6:30 p. m.

The observations taken by Mr. Ryan and his assistants (Exhibits 30 to 35) clearly show that even during rush hours a much larger number of cars could be sent north and south at the intersection of Twenty-third street and Fourth avenue, thus definitely removing this point from consideration as a limiting factor.

As to Forty-second street, between Madison and Fourth avenues, Mr. Ryan's evidence (Exhibits 7, 8 and 9) shows that even under present conditions it would be possible to pass many more cars through Forty-second street during the rush hours, and that during the remainder of the day a sufficient number of cars could be sent through to give adequate service. These facts were not denied by Mr. Root.

The congestion of vehicular and street car traffic was greatest at the intersection of Grand street and the Bowery. Mr. Ryan's evidence (Exhibits 6 and 10) indicate that no more cars could be operated through this intersection during the evening rush hours. The traffic upon other lines at this point is very heavy, and relief is much more needed upon them than upon the Madison avenue line. For this reason I have not recommended an increase in service during the evening rush hours below Astor place. It will be necessary to consider this phase of the problem more fully and to attempt to solve the congestion by rearrangement of the tracks or runs.

To determine whether the service was adequate or inadequate, Mr. Ryan and his assistants made a large number of observations at different points and upon different days.

This evidence (see especially Exhibits 2 to 5, 9, 13 to 15, 25a, 27 to 29, 31 and 32) shows that the service was inadequate to a greater or less degree during:

1. The morning and evening rush hours: The number of persons standing at these hours was often very large. The congestion was worse during the evening than in the morning owing to the fact that the rush period in the evening is shorter than in the morning.

2. The hours immediately preceding and following the rush hours: The extent of inadequacy was not so great as at the height of the rush hours and would have been much less if the schedule in force at the height of the traffic had been extended into the periods immediately preceding and following it.

3. The early evening hours: An insufficient number of cars was run to accommodate the persons going to and from the theatres or to make social calls.

4. The hours between noon and midnight upon Sundays, particularly just after noon and in the late evening: No explanation was offered for the inadequacy of the service upon Sunday. The number of passengers is very much less than upon any week day, and there is practically no vehicular traffic to interfere at any point upon the line (see page 20 of the evidence of September 28).

The service was also shown to be unsatisfactory in the following regards:

5. Not infrequently cars were switched back at Eighty-sixth street which contained a number of passengers, who were unable to find seats in the car following (see Exhibit 17).

6. Many of the cars did not bear a sign showing the destination of the run. This caused considerable inconvenience to the public and not infrequently accentuated the crowding in the other cars, for persons would wait until they found a car having the proper destination sign.

7. No "run numbers" were displayed upon any of the cars, rendering it impossible to compare the actual operation of the cars with the schedule (see pages 89 and 90 of the evidence of September 23).

The traffic returns presented by Mr. Root (see Exhibits 20 to 25) were not in the same form as the returns presented by Mr. Ryan. Mr. Root reported for each half hour the total seating capacity of the cars passing certain points and the approximate number of passengers therein. The data in this form do not show how many persons were standing, or how many cars were overloaded, for unless the total number of vacant seats in all cars for the whole period was less than the total number of persons standing, the service would appear to be adequate. But every traffic manager knows and Mr. Root admitted (see pages 98 to 101 of the evidence of September 23) that it would be impossible to run the cars in such a manner that the seats would be filled in all the cars without having a large number of persons standing on many of the cars, and also that even where the tables showed that the number of vacant seats in certain cars did not exceed the number of persons standing in others, there must have been a considerable number of cars in which there were many persons standing. Further, it is true that at the beginning of a given half hour there might be a number of vacant seats and at the end of the half hour there might be a large number of persons standing, but if the two equalized each other the diagrams would show the service to be adequate. But what satisfaction is it to a passenger to know that there is a seat in some other car or that there is a seat to be had at some other time of the day, if it is not available when he wishes to use it? Thus analyzed, even the evidence presented by Mr. Root supports that presented by Mr. Ryan and demonstrates that for considerable periods during each day, Sundays as well as week days, the service on the Madison avenue line was not adequate or satisfactory.

To remedy the inadequacy of the service so far as possible under the present conditions in Forty-second street, and at Grand street and the Bowery, certain increases in the number of cars operated was suggested in the original order for the hearing. Before any evidence was taken it was thought that the company might be unable to comply with the order through an insufficiency of cars, but Mr. Root testified (page 21 of the evidence of September 16) that the company did have sufficient cars to comply with the increased service proposed, and that there was no reason, with one exception which will be noted later, why additional service could not be given immediately if ordered by the Commission. I have considered it advisable, therefore, to recommend that the order be put into effect immediately.

When the exhibits prepared by Mr. Root and Mr. Ryan are examined and compared with the suggested increase in the service, two facts should be kept in mind. The observations made by the Commission's inspectors were taken during the summer and early part of September, when the traffic was lower than in ordinary months and when the open cars were used. The seating capacity of an open car is fifty-five and of a closed car thirty-six. Hence, in order to give the same seating capacity during the late fall, winter and early spring it would be necessary to operate three cars for every two operated during the summer. In other words, when two open cars are taken off three closed cars should be put on. A still further increase of about 30 per cent is necessary during the fall months because of the much heavier traffic at that period of the year (see Exhibit 18). All in all, then, nearly twice as many cars should be operated during the fall months as during the summer months upon the basis of seating capacity as compared with the number of passengers carried.

Regarding the advisability of ordering a larger number of cars to be run on the Madison avenue line, Mr. Root maintained that such an increase would not necessarily increase the carrying capacity of the line, upon the theory that the cars added would interfere with the maintenance of the headway. This point does not appear to me to be valid except possibly during the height of the evening rush hours. At other times certainly the headway will not be sufficiently reduced, even with the additional cars ordered, to interfere materially with the speed.

The one reason finally urged by Mr. Root why a larger number of cars had not been run, and why the service could not be improved, was that sufficient employees

— motormen and conductors — could not be secured (pages 166 to 199 of the evidence of October 9, and particularly pages 183, 189 and 191). It is, perhaps, true that with the present wages, hours of labor, method of payment, uniforms and conditions of labor, a larger number of competent men could not be secured, but as these conditions are self-imposed and may be altered by the company at any time, and as the work is not hazardous or calling for any unusual amount of skill, it does not seem that the existence of conditions which may be altered by the company itself should be considered a bar to the maintenance of adequate service. If the conditions were to be made less attractive by the company than at present, a smaller number of men would work than are now working, and then this fact could be offered as a valid reason why the service should be made less adequate than at present. If the present conditions were bettered, the company would doubtless secure the requisite number of competent men.

The orders which I recommend should be adopted in conformity with the above facts are appended hereto, likewise the evidence taken in the several hearings held.

The Commission thereupon adopted Order No. 52 requiring the running of more cars as recommended in the opinion.

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**Brooklyn Rapid Transit Company, Nassau Electric Railroad Company, Brooklyn Heights Railroad Company, Brooklyn, Queens County and Suburban Railway Company, Coney Island and Gravesend Railway Company and American Railway Traffic Company.— Removal of ashes.**

Hearing Order No. 11, issued August 29, 1907, p. 688, 1907 Rep.

Hearing Order No. 16, issued August 29, 1907, p. 690, 1907 Rep.

Opinion of Commissioner McCarroll.

Dismissal Order No. 71, issued November 4, 1907, p. 719, 1907 Rep.

**OPINION OF COMMISSION.**

(Adopted November 4, 1907.)

**COMMISSIONER MCCARROLL:**

Your Committee to whom was referred the matter of the transportation of ashes in the day time by the Brooklyn Rapid Transit Company, would respectfully report:

The Committee understands that the contract between the Brooklyn Rapid Transit Company and the city, for this service, was not the subject referred to it, but merely the question of transportation of the ashes. The merits of the contract itself, therefore, were not formally, though they were incidentally, considered by your Committee.

Two hearings were given, the first one being adjourned after notice of appearance at the request of the counsel of the company, so that the city might be made a party and heard. At the second hearing, the testimony, and particularly that of Commissioner Bensel of the Street Cleaning Department, and President Winter, disclosed that the city had repeatedly modified the terms of the contract regarding the transportation of the ashes and assented to the same being done in the day time. Indeed the contract specifies that the work is to be carried on subject to the approval of the city in general.

It was also disclosed that the Street Cleaning Department was unable to deliver the ashes to the railway company at such stated times and in such ways as would enable it to transport the same exclusively in the day time. Indeed, it seemed to be established that for the railroad company to hold the gatherings by the Street Cleaning Department at its various stations through the day time, so as to accumulate for transportation by night only, might be physically impossible (certainly so with the present equipment) and would create conditions prejudicial to health. At the present time about one-third of the work is done at night, and it was testified

**18 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.**

that there was more complaint on the part of the public because of the night work than because of the transportation by day.

From a consideration of the testimony and the statements made by Commissioner Bensel, your Committee is of opinion that no action should be taken by the Commission in this matter and would recommend that the order submitted herewith be adopted.

Dismissal Order No. 71 was thereupon adopted.

Order No. 12. (See Order No. 6, page 11 herein.)

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**Interborough Rapid Transit Company.—General increase of service.**

Hearing Order No. 13, issued August 29, 1907, p. 689, 1907 Rep.  
Final Order No. 33, issued October 9, 1907, p. 696, 1907 Rep.

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**Interborough Rapid Transit Company.—Increase of service between West Farms and stations on Second and Third avenue elevated lines.**

Hearing Order No. 14, issued August 29, 1907, p. 689, 1907 Rep.

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**New York City Railway Company.—Service on Broadway line.**

Hearing Order No. 15, issued August 29, 1907, p. 689, 1907 Rep.  
Final Order No. 43, issued October 23, 1907, p. 701, 1907 Rep.

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Hearing Order No. 16. (See Order No. 11, page 17 herein.)

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Order No. 17. (See Order No. 6, page 11 herein.)

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**Union Railway Company of New York City.—General Increase of service.**

Hearing Order No. 18, issued September 13, 1907, p. 690, 1907 Rep.  
Final Order No. 107, issued November 22, 1907, p. 727, 1907 Rep.

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**Coney Island and Brooklyn Railroad Company.—Additional Equipment and Appliances.**

Hearing Order No. 19, issued August 21, 1907, p. 690, 1907 Rep.  
Final Order No. 21, issued September 13, 1907, p. 691, 1907 Rep.  
Final Order No. 60, issued October 30, 1907, p. 716, 1907 Rep.  
Case not closed in 1907, see page 589 herein.

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Order No. 20. (See Order No. 7, page 11 herein.)

Order No. 21. (See Order No. 19, page 18 herein.)

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**Gas and Electrical Corporations.— Filing of corporate documents.**

Filing Order No. 22, issued August 20, 1907, p. 686, 1907 Rep.  
(Published in 1907 Report as Order No. 8-A.)

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**New York Central and Hudson River Railroad Company; New  
New York and Putnam Railroad Company; New York and  
Harlem Railroad Company.— Inadequate local service in the  
Bronx.**

Complaint Order No. 23, issued September 18, 1907, p. 693, 1907 Rep.  
Case not closed in 1907, see page 467 herein.

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**Interborough Rapid Transit Company.—Additional stairways at  
137th street and Broadway station and 145th street and  
Broadway station.**

Order No. 24, issued September 18, 1907, p. 693, 1907 Rep.  
Case not closed in 1907, see page 339 herein.

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**Forty-second Street, Manhattanville and St. Nicholas Avenue  
Railway Company.— Inadequate service on Boulevard and  
Broadway lines.**

Hearing Order No. 25, issued September 25, 1907, p. 693, 1907 Rep.  
Opinion of Commissioner Maltbie.  
Final Order No. 44, issued October 23, 1907, p. 703, 1907 Rep.

OPINION OF COMMISSION.

(Adopted October 23, 1907.)

COMMISSIONER MALTBIE:

Upon August 29th the Commission adopted an order directing that an inquiry be held upon September 16th, to determine the adequacy of the service and equipment of the New York City Railway Company upon the Broadway line and upon certain other lines in connection therewith. Accordingly a hearing was held and evidence taken upon September 16th. The hearing was continued upon September 23d, at which time the Commission received notice that the cars upon Broadway whose southern destination was Houston street — the ones primarily affected by the order — were operated by the Forty-second Street, Manhattan and St. Nicholas Avenue Railway Company, and not by the New York City Railway Company. This was the first notice the Commission had had of this fact, and as the original notice for a hearing had been served upon the New York City Railway Company, it became necessary, in order to make the procedure valid, to adjourn it and serve a new notice upon the company which was actually operating the cars.

A new order for a hearing upon October 7th, running against the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, was adopted by the Commission on September 25th. Upon this date — October 7th — the hear-

20 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

ing relating to the New York City Railway Company was also reopened and the agreement between the two companies entered upon the records of each hearing. The documents submitted showed that the agreement had expired but that it was being continued by mutual consent. Upon October 9th the two hearings were merged and further evidence taken. Further hearings were held upon October 14th and October 16th, when the case was closed, at the request of the railway company.

In the meantime the Commission had received notice that receivers had been appointed for the New York City Railway Company by Judge Lacombe of the United States Circuit Court, and that the operation of the road was entirely in their hands. Notice of the hearing was served upon Messrs. Joline and Robinson, the receivers, and of the increase of the service proposed, but they did not appear either personally or by counsel.

The evidence presented by the inspectors of the Commission and Mr. Oren Root, general manager of the company, shows that the service between 8 A. M. and 7 P. M. has not been sufficient to provide seats for the passengers; that many cars have been switched back at Houston street which should be sent through, at least as far as Murray street, to accommodate the traffic; that approximately one-quarter of the cars switched back at Houston street should be sent further down town, at least to Murray street; that the cars which have been run through to South Ferry have borne no destination signs indicating this fact; and that the congestion upon other cars has been increased because of this fact.

Sufficient data are not available at this moment to indicate whether the service upon the lines run in connection with the Broadway line is inadequate. Further observations will not be taken, but an order may be issued without delay in relation to the service on Broadway south of Houston street, and I beg to recommend the adoption of the order accompanying this report, and to say further that the company has been complying with it for sometime, so far as the increase of service is required.

The evidence taken in these hearings, including the numerous exhibits, is also submitted herewith.

Thereupon Final Order No. 44 was issued.

See proceedings under Order No. 10.

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**Richmond Light and Railroad Company.—Operation of cars around Fort Wadsworth curve.**

Hearing Order No. 26, issued September 27, 1907, p. 694, 1907 Rep.  
Final Order No. 50, issued October 25, 1907, p. 709, 1907 Rep.

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**Gas Corporations.—Gas meter testing.**

Order No. 27, issued September 30, 1907, p. 694, 1907 Rep.

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**Gas and Electrical Corporations.—Notice of accidents.**

Opinion of Commissioner Maltbie.  
Filing Order No. 28, issued October 4, 1907, p. 695, 1907 Rep.

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OPINION OF COMMISSION.  
(Adopted October 4, 1907.)

COMMISSIONER MALTBIE:

As the Committee to whom was referred the question of accident reports from gas and electric companies, I beg to submit the following report:

Under the statutes in force prior to July 1, 1907, the Commission of Gas and Electricity — our predecessors — required every gas and electricity corporation to report regularly every accident resulting in loss of life or any injury to person in connection with the operation of their plants. The statutory provisions under which the Commission exercised this function were incorporated in the Public Service Commissions Law of 1907, but since July 1st of this year no gas or electricity corporation has regularly reported accidents, although the Commission of Gas and Electricity had adopted a form of report which had not been revoked prior to July 1st, and for which no form has since been substituted by this Commission.

After thoroughly considering the question, it seems to your Committee that accidents should be promptly reported, and that a form for such reports should be adopted by the Commission. The preparation of such reports will not be a hardship upon any corporation, and the reports will give considerable information which can be utilized by the Commission in preparing orders to prevent recurrence of accidents.

I recommend, therefore, that the following resolution be adopted by the Commission :

Thereupon Filing Order No. 28 was issued.

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**New York, New Haven and Hartford Railroad Company.—**

**Smoke nuisance, Harlem river yards.**

Complaint Order No. 29, issued October 4, 1908, p. 695, 1907 Rep.  
Case not closed in 1907; see page 582 herein.

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**Union Railway Company of New York City; Interborough Rapid Transit Company and New York City Interborough Railway Company.— Discrimination in fares between Westchester and points in New York city.**

Complaint Order No. 30, issued October 9, 1907, p. 696, 1907 Rep.  
Hearing Order No. 57, issued October 30, 1907, p. 715, 1907 Rep.  
Complaint Order No. 58, issued October 30, 1907, p. 715, 1907 Rep.  
Final Order No. 146, issued December 9, 1907, p. 736, 1907 Rep.

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**Interborough Rapid Transit Company.— Inadequate stairway facilities, Cortlandt street station, Ninth avenue "L."**

Complaint Order No. 31, issued October 9, 1907, p. 696, 1907 Rep.

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**Coney Island and Brooklyn Railroad Company.— Service on Smith street line.**

Hearing Order No. 32, issued October 9, 1907, p. 696, 1907 Rep.  
Final Order No. 161, issued December 11, 1907, p. 744, 1907 Rep.

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Final Order No. 33. (See Order No. 13, page 18 herein.)

**Brooklyn Union Elevated Railroad Company—Inadequate service—Additional station signs and stairways.**

Complaint Order No. 34, issued October 11, 1907, p. 699, 1907 Rep.  
Complaint Order No. 35, issued October 11, 1907, p. 700, 1907 Rep.  
Opinion of Commissioner Bassett.

Hearing Order No. 89, issued November 13, 1907, p. 722, 1907 Rep.  
Final Order No. 156, issued December 16, 1907, p. 742, 1907 Rep.  
Case not closed in 1907; see page 634 herein.

**OPINION OF COMMISSION.**

(Adopted November 7, 1907.)

**COMMISSIONER BASSETT:**

This complaint, dated September 13, 1907, was made up of about thirty different items. Upon its receipt it was referred to me for analysis. I reported that some of the items should be held in abeyance and for further investigation; that others should be forwarded to Mr. Ivins, and that the remainder should be forwarded as complaints to the operating company; this was done and the Brooklyn Union Elevated Railroad Company duly answered, forwarding a copy of its answer to the complainant. The complainant replied; the answer and reply were referred to me.

The answers of the operating company express compliance with six of the items, viz.:

Opening the side doors at all times on the bridge cars.

Operation of more cars on Broadway elevated line.

More trains on Sundays and holidays.

Extension of platforms.

Operating Gates avenue short line cars to Manhattan Junction on the Lexington avenue line.

Six car trains instead of five car trains on the Lexington avenue line.

It seems desirable that a hearing should be had on some of the items of complaint with which the operating company does not express compliance; these items are the following:

That at least 150 additional elevated station signs be prepared and placed by said company, properly distributing them among their various elevated, surface and depressed road stations.

To provide more or wider stairways at the Gates avenue and Halsey street stations of the Lexington avenue line.

In case there is further work of reinforcing the elevated structure on Broadway, not to decrease the present headroom.

To remove the Tillary street station and platform.

To repair and keep in first class order the Lafayette avenue station of the Fulton street elevated road, even if the same shall not be put into present use.

To operate midnight trains on all elevated lines with not over fifteen minutes headway at least until 1 o'clock A. M.

I have asked the counsel to prepare an order for a hearing on the last mentioned items, and submit the proposed order for hearing herewith.

There are various other items with which the operating company does not express compliance, and which are not included in the order for hearing. The reason for this is that they are the same as, or are included in investigations and hearings now under way, which have been initiated from other sources.

Thereupon Hearing Order No. 89 was issued.

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**Brooklyn Union Elevated Railroad Company and Brooklyn Heights Railroad Company.—Transfers from Nostrand avenue trolley line to Fulton street elevated.**

Complaint Order No. 36, issued October 11, 1907, p. 700, 1907 Rep.  
Case not closed in 1907; see page — herein.

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\* See footnote, page 9.

**Interborough Rapid Transit Company.—Violation of Eight Hour Law.**

Complaint Order No. 37, issued October 11, 1907, p. 700, 1907 Rep.

Hearing Order No. 59, issued October 30, 1907, p. 715, 1907 Rep.

Opinion of Commissioner Eustis.

Dismissal Order No. 112, issued November 27, 1907, p. 729, 1907 Rep.

\*[The towermen employed by the Interborough Rapid Transit Company are not within the provisions of L. 1907, Ch. 627.]

L. 1907, Ch. 627 is in part as follows:

"§ 7-a. Regulation of hours of labor of block system telegraph and telephone operators and signalmen on surface, subway and elevated railroads.—The provisions of section seven of this chapter shall not be applicable to employees mentioned herein. It shall be unlawful for any corporation or receiver, operating a line of railroad, either surface, subway or elevated, in whole or in part, in the state of New York, or any officer, agent or representative of such corporation or receiver to require or permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed the 'block system' (defined as follows): Reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines or train dispatchers in its service whose duties substantially, as hereinbefore set forth, pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders as interpreted in this section, to be on duty for more than eight hours in a day of twenty-four hours, and it is hereby declared that eight hours shall constitute a day of employment for all laborers or employees engaged in the kind of labor aforesaid. \* \* \*

Complaint was made to the Commission that certain towermen were working more than eight hours a day in violation of this law.

**OPINION OF COMMISSION.**

(Adopted November 27, 1907.)

**COMMISSIONER EUSTIS:**

"In the case of the trial coming on upon the complaint of Grant Smith against the Interborough Rapid Transit Company, I wish to read the following decision:

The questions of fact and law arising upon the complaint and answer herein having come on for trial before me, I find that the questions of fact alleged in the complaint have been sustained. In fact, the defendant's chief witness conceded that several of the employees worked the number of hours specified in the complaint.

This complaint was made under chapter 627 of the Laws of 1907, which went into effect on the first day of October, and it seems to have been passed for the purpose of protecting the public from the danger that arises from telegraph and telephone operators, who operate switches, being overworked. The men complained of by the complainant are tower switchmen, but the evidence shows that they are not telegraph or telephone operators in any sense in connection with their regular work as switchmen. The proof is not clear that they all have even telephones in their booths, but they probably do, as the general manager of the road said it was the intention of the management to have telephones in all such places, so that in case of emergency the men could be reached, or the men could reach other officers of the road without leaving their station.

The only way that this Commission could hold the defendant guilty of violation of this law would be to say that the towerman employed by them at the various towers, designated in the complaint, are telegraph or telephone levermen, and as the evidence was very clear that they did not use the telegraph or telephone in any manner in connection with their work, it would be a forced construction, and as this is a penal statute, it should be construed literally, and I am therefore of the opinion that the complaint herein should be dismissed."

An order for dismissal was thereupon presented by Commissioner Eustis and adopted by the Commission.

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\* See footnote, page 9.

**Brooklyn Heights Railroad Company and Brooklyn Union Elevated Railroad Company.**—Increase of service on Jamaica avenue line and on Lexington avenue line.

Hearing Order No. 38, issued October 11, 1907, p. 700, 1907 Rep.  
Final Order No. 99, issued November 18, 1907, p. 724, 1907 Rep.  
Final Order No. 165, issued December 20, 1907, p. 747, 1907 Rep.  
Case not closed in 1907, see page 413 herein.

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**Brooklyn Heights Railroad Company.**—Improper maintenance of stringers and ties on Brooklyn bridge.

Complaint Order No. 39, issued October 11, 1907, p. 700, 1907 Rep.

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**Brooklyn Heights Railroad Company.**—Repair of switches, curves and cross-overs.

Complaint Order No. 40, issued October 11, 1907, p. 700, 1907 Rep.

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**New York and Harlem Railroad Company; New York Central and Hudson River Railroad Company.**—Construction of loop at Grand Central station.

Complaint Order No. 41, issued October 16, 1907, p. 700, 1907 Rep.

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**Nassau Electric Railroad Company; Sea Beach Railway Company.**—Failure to issue transfers at Bay Ridge avenue and Fifth avenue, Brooklyn.

Complaint Order No. 42, issued October 21, 1907, p. 701, 1907 Rep.

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Order No. 43. (See Order No. 15, page 18 herein.)

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Order No. 44. (See Order No. 25, page 19 herein.)

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Order No. 45. (See Order No. 7, page 11 herein.)

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Order No. 46. (See Order No. 7, page 11 herein.)

**Brooklyn Heights Railroad Company.**—Establishment of trolley station on Flatbush avenue, between Dorchester and Cortelyou roads.

Complaint Order No. 47, issued October 25, 1907, p. 708, 1907 Rep.  
Letter received from Company stating that arrangements for establishment of station had been made.

**Brooklyn Heights Railroad Company and Brooklyn Union Elevated Railroad Company.**—Superintendent of operation of trains on Brooklyn bridge.

Hearing Order No. 48, issued October 25, 1907, p. 708, 1907 Rep.  
Opinion of Commissioner Bassett.

OPINION OF COMMISSION.  
(Adopted December 11, 1907.)

COMMISSIONER BASSETT:

On October 25, 1907, the Commission appointed the undersigned to conduct a hearing on the question of the need of a superintendent at the Brooklyn Bridge terminals under Order No. 48. After hearing the evidence given by the inspectors of the Public Service Commission and by the Brooklyn Union Elevated Railroad Company, I find that the facts are substantially as follows:

That a person performing the duties of superintendent is now in charge, and there is a system of communication between him and the other employees at the terminals. That a somewhat intricate system exists for communicating from one part of the station to another, and that the main need in rush hours is that announcements from time to time should be made. The operating company, pending the course of this hearing, have perfected a method of making announcements and intend to place one or two more men at the bridge terminals for the purpose of assisting in the handling of crowds especially in times of accidents. I hesitate to advise an order that a specific man shall be put on duty with specific duties regarding this intricate situation. The purpose of the hearing was more to investigate possibilities of improvement, and as the company has already made progress in this direction, I recommend that no final order be made against the operating company in this behalf. As the investigation began in our Commission it is not necessary that any order of dismissal should be made.

**Brooklyn Union Elevated Railroad Company.**—Operation of trains on Saturday afternoons over Brooklyn Bridge.

Complaint Order No. 49, issued October 25, 1907, p. 708, 1907 Rep.

Order No. 50. (See Order No. 26, page 20 herein.)

**Nassau Electric Railroad Company.**—Inadequate service on Fifth avenue surface line, Brooklyn.

Complaint Order No. 51, issued October 25, 1907, p. 710, 1907 Rep.

Order No. 52. (See Order No. 10, page 13 herein.)

**Railroad Corporations.—Filing of tariff schedules.**

Filing Order No. 53, issued October 28, 1907, p. 713, 1907 Rep.

**Express Corporations, Joint Stock Associations, Firms and Individuals Doing Express Business.— Filing of tariff schedules.**

Filing Order No. 54, issued October 24, 1907, p. 714, 1907 Rep.

**Brooklyn Heights Railroad Company.— Excessive speed, Flat-bush avenue hill.**

Complaint Order No. 55, issued October 28, 1907, p. 715, 1907 Rep.

**Brooklyn Union Elevated Railroad Company.— Inadequate service on Culver line to points beyond Kensington.**

Complaint Order No. 56, issued October 28, 1907, p. 715, 1907 Rep.

Order No. 57. (See Order No. 30, page 21 herein.)

Order No. 58. (See Order No. 30, page 21 herein.)

Order No. 59. (See Order No. 37, page 23 herein.)

Order No. 60. (See Order No. 19, page 18 herein.)

**Brooklyn Heights Railroad Company.— Improper use of “T” rail on Brighton Beach division, at Avenue C.**

Complaint Order No. 61, issued October 30, 1907, p. 718, 1907 Rep.

Order No. 62. (See Order No. 7, page 11 herein.)

**Brooklyn Union Elevated Railroad Company.— Dripping water, terminal of Brooklyn Bridge at Sands street.**

Complaint Order No. 62½, issued November 1, 1907, p. 718, 1907 Rep.  
Letter received from Company explaining that matter complained of had been called to attention of Department of Bridges.

Order No. 63. (See Order No. 7, page 11 herein.)

**Brooklyn Union Elevated Railroad Company.**— Defective condition of ties and guard rails on Brooklyn Bridge.

Complaint Order No. 63½, issued November 1, 1907, p. 718, 1907 Rep.

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**Coney Island and Brooklyn Railroad Company.**— Defective equipment on Smith street line.

Complaint Order No. 64, issued November 4, 1907, p. 718, 1907 Rep.  
Hearing Order No. 104, issued November 20, 1907, p. 726, 1907 Rep.  
Final Order No. 164, issued December 20, 1907, p. 746, 1907 Rep.  
Case not closed in 1907; see page 587 herein.

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**Brooklyn Union Elevated Railroad Company.**— Overloading trains on Sundays, Lexington avenue and Ridgewood lines.

Complaint Order No. 65, issued November 4, 1907, p. 718, 1907 Rep.

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**Brooklyn Union Elevated Railroad Company.**— Enlargement of Cypress Hills station.

Hearing Order No. 66, issued November 4, 1907, p. 718, 1907 Rep.  
Case not closed in 1907; see page 639 herein.

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**New York City Interborough Railway Company.**— Inadequate shelter at 181st street and St. Nicholas avenue and speed of cars crossing Washington bridge.

Complaint Order No. 67, issued November 6, 1907, p. 718, 1907 Rep.  
Hearing Order No. 101, issued November 20, 1907, p. 726, 1907 Rep.  
Final Order No. 183, issued December 31, 1907, p. 767, 1907 Rep.  
Case not closed in 1907; see page 663 herein.

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**Brooklyn Union Elevated Railroad Company.**— Transfers at Cypress Hills station.

Complaint Order No. 68, issued November 6, 1907, p. 719, 1907 Rep.  
Case not closed in 1907; see page 639 herein.

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**Brooklyn Heights Railroad Company.**— Careless operation of surface cars at Manhattan terminal of Brooklyn bridge.

Complaint Order No. 69, issued November 6, 1907, p. 719, 1907 Rep.

28 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

**Brooklyn Heights Railroad Company.**—Failure of trolley wires to follow curvature of tracks on South roadway of Brooklyn Bridge, Manhattan terminal

Complaint Order No. 70, issued November 6, 1907, p. 719, 1907 Rep.

Order No. 71. (See Order No. 11, page 17 herein.)

**Brooklyn, Queens County and Suburban Railroad Company.**—Dangerous switch at Cypress Hills station.

Complaint Order No. 72, issued November 8, 1907, p. 720, 1907 Rep.

**Brooklyn Heights Railroad Company.**—Defective condition of “Gypsy pit” at Manhattan terminal of Brooklyn bridge.

Complaint Order No. 73, issued November 8, 1907, p. 720, 1907 Rep.

**Brooklyn Heights Railroad Company.**—Defective draw bars.

Complaint Order No. 74, issued November 8, 1907, p. 720, 1907 Rep.

**Richmond Light and Railroad Company.**—Inadequate service and equipment.

Hearing Order No. 75, issued November 8, 1907, p. 720, 1907 Rep.

Opinion of counsel.

Case not closed in 1907; see page 486 herein.

OPINION OF COUNSEL.

October 25, 1907.

HON. WM. McCARROLL, Commissioner, Public Service Commission for the First District:

DEAR SIR:—In answer to your verbal request for a memorandum of law on the question of procedure in changing the grade crossing at Clifton, Staten Island, I submit the following:

The doubletracks of the Staten Island Rapid Transit Railroad Company, a steam railroad, across Bay street, Clifton, at grade. The double tracks of the Richmond Light and Railroad Company, an electric street railway company, lie on Bay street and also across the tracks of the Staten Island Rapid Transit Railroad Company at this point at grade.

Under section 66 of the Railroad Law (L. 1897, Ch. 754), your Commission as successor of the railroad commissioners, when, in your opinion, public safety requires it, may, on your own motion, institute proceedings for an alteration in the grade crossing upon notice of not less than ten days to the Staten Island Rapid Transit Railroad Company, to the city of New York and the Richmond Light and Railroad Company and other persons interested, including adjoining land owners. The proceedings shall be conducted as provided in section 62 of the Railroad Law (L. 1897, Ch. 754).

Section 62 of the Railroad Law requires your Commission to give the notice as above provided and in addition to cause notice of said hearing to be advertised in at least two newspapers published in the locality.

After this hearing your Commission shall determine what alteration or changes, if any, shall be made and your determination shall be communicated within twenty

days after final hearing to all parties to whom notice of hearing was given or who appeared. Any person aggrieved by your decision may appeal.

Section 63 of the Railroad Law (L. 1897, Ch. 754), provides for the acquisition of land by the railroad company and the city jointly or for condemnation by the city.

Section 65 of the Railroad Law provides that in a case such as this fifty per cent (50%) of the expense of the change shall be borne by the railroad corporation, twenty-five (25%) per cent. by the city and twenty-five (25%) per cent. by the State. This section also provides in detail how the work should be done.

This section also makes the action by the Commission conditional upon there being a State appropriation sufficient to defray the State's share of the expense.

Yours very truly,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

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### Staten Island Midland Railway Company.—Inadequate service and equipment.

Hearing Order No. 76, issued November 8, 1907, p. 720, 1907 Rep.  
Case not closed in 1907; see page 564 herein.

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### Staten Island Railway Company.—Inadequate service and equipment.

Hearing Order No. 77, issued November 8, 1907, p. 720, 1907 Rep.  
Final Order No. 174, issued December 27, 1907, p. 754, 1907 Rep.  
Case not closed in 1907; see page 393 herein.

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### Staten Island Rapid Transit Railway Company.—Inadequate equipment and service.

Opinion of counsel.  
Hearing Order No. 78, issued November 8, 1907, p. 721, 1907 Rep.  
Final Order No. 175, issued December 27, 1907, p. 757, 1907 Rep.  
Case not closed in 1907; see pages 390, 735 herein.  
(See opinion of counsel in proceedings after Order No. 75, page 28.)

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### Brooklyn Heights Railroad Company.—Improper system of signaling at Manhattan terminal, Brooklyn bridge.

Complaint Order No. 79, issued November 11, 1907, p. 721, 1907 Rep.

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### Brooklyn Heights Railroad Company and Brooklyn Union Elevated Railroad Company.—Inadequate service on Brooklyn Bridge.

Complaint Order No. 80, issued November 11, 1907, p. 721, 1907 Rep.  
Hearing Order No. 108, issued November 25, 1907, p. 729, 1907 Rep.  
Opinion of Commissioner Bassett.  
Dismissal Order No. 168, issued December 27, 1907, p. 749, 1907 Rep.

OPINION OF COMMISSION.  
(Adopted December 27, 1907.)

COMMISSIONER BASSITT:

The undersigned has held a number of hearings in accordance with Order No. 80, made upon the complaint of Robert E. Anthony against the Brooklyn Heights Rail-

30 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

road Company touching the operation of elevated trains across the Brooklyn Bridge in rush hours. The evidence shows that the system of changing from through trains to bridge trains and back again is very nearly perfect, and that when it operates without accidents the public are carried about as rapidly and conveniently as the circumstances of an over-crowded structure will permit. Break-downs have been too frequent due to poor equipment on the bridge cars. These cars are owned by the city and operated by the Brooklyn Union Elevated Railroad Company. As their use is soon to be discontinued they have not been kept in perfect condition with the result that draw-bars pull out and other accidents frequently happen. This Commission has issued orders in these respects which have been complied with. On the recommendation of our experts minor changes have been made during the rush hours that have resulted in an improvement. These have to do with the prompt starting of trains, better policing, more intelligent management of the crowds and the lessening of intervals between trains while changing from the bridge local cars to the through service. On the whole the investigation based upon this order has been beneficial, but it is impossible or unjust to direct the specific fulfillment of any of the items of the complainant's complaint. On this account I recommend that the complaint be dismissed.

Dismissal Order No. 168 was thereupon adopted.

**Brooklyn Heights Railroad Company.—Improper use of stairway facilities on Brooklyn Bridge elevated platform.**

Complaint Order No. 81, issued November 11, 1907, p. 721, 1907 Rep.

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**Dry Dock, East Broadway and Battery Railroad Company; New York City Railway Company.—Service on 8th street cross-town line and Avenue B line of horse cars.**

Complaint Order No. 82, issued November 18, 1907, p. 721, 1907 Rep.

Complaint Order No. 130, issued December 4, 1907, p. 732, 1907 Rep.

Complaint Order No. 154, issued December 16, 1907, p. 741, 1907 Rep.

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**New York City Railway Company.—Inadequate service on Avenue B line to Chatham square.**

Complaint Order No. 83, issued November 18, 1907, p. 721, 1907 Rep.

Complaint Order No. 120, issued December 4, 1907, p. 732, 1907 Rep.

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**Interborough Rapid Transit Company.—Lack of through service on Second avenue elevated road to the Bronx.**

Complaint Order No. 84, issued November 13, 1907, p. 721, 1907 Rep.

Hearing Order No. 157, issued December 16, 1907, p. 744, 1907 Rep.

Opinion of Commissioner Eustis.

Dismissal Order No. 178, issued December 30, 1907, p. 761, 1907 Rep.

The following opinion relates to the complaint of John Davis against the Interborough Rapid Transit Company for additional service on the Second Avenue and Third Avenue elevated roads between the Borough of the Bronx and South Ferry, and also to the complaint of Rev. Otto Graesser against the same company for additional through trains from the Bronx to points south of Chatham Square.

**OPINION OF COMMISSION.  
(Adopted December 27, 1907.)**

**COMMISSIONER EUSTIS:**—

These cases were heard together, as they involved the same principle and subject matter.

The complainant in the first case is a resident of the Bronx, and resides near One Hundred and Forty-third street, so that in going to business he takes the elevated at One Hundred and Forty-third street station. His office is located near Hanover square, so that in order to arrive at the nearest place to his office he alights at Hanover square station of the elevated road, and is so situated that if he takes a Third avenue "L" in the Bronx he would be carried to the City Hall, unless he changed cars at Chatham square, which would require walking over the bridge. If he goes down Second avenue and takes a Second avenue car in the Bronx, which runs for a short time in the morning and evening, as far as Canal street, when he would then have to change cars either at One Hundred and Twenty-ninth street or Canal street, he feels that for his convenience, and that of many others situated as he is, the Second avenue cars should be run from some section of the Bronx to South Ferry, especially during the rush hours morning and night, when business people are going to their business or returning to their homes.

The complainant in the second case is a minister who has a church in the neighborhood of Second avenue and Ninth street, and it appears that a great many of his parishioners have moved to the Bronx, and that he is called there frequently during the middle of the day, making calls, attending various church duties, such as funerals, weddings, etc., and finds that the Second avenue line is the one most convenient, but in order to get to the Bronx he is compelled to make a transfer of trains at One Hundred and Twenty-ninth street from the Second avenue to Third avenue, as both of those roads converge at the Harlem river and use the same trackage northerly therefrom. His contention is that a certain number of trains of the Second avenue line should be continued into the Bronx during the day so that people living along the line of Second avenue could go to the Bronx by continuous passage without change of cars.

The railroad company claims, on the other hand, that the operation of those two lines is a matter that requires a great deal of care and arrangement, that it would be exceedingly dangerous to alternate into the Bronx during the day time one train from the Third avenue and another from the Second avenue, and that they are able to give better service to a larger number of people by running a certain line continuously between definite terminations, and therefore they have arranged a Third avenue line from the City Hall to the Bronx continuously, and they have another line from South Ferry to One Hundred and Twenty-ninth street via Third avenue, and also a line from South Ferry to One Hundred and Twenty-ninth street via Second avenue; and they also testified that from their data to make a change as required by these complainants would inconvenience three times as many people as it would accommodate, as the people using the Third avenue line are so much more numerous, and if those trains that are not now running to the Bronx were discontinued in order to allow some of the Second avenue trains to take their place it would be a very great hardship as well as adding to the confusion and trouble in getting their trains through on time, especially during the rush hours when the headway is very short.

After giving the matter considerable thought, hearing the evidence and personally investigating the action of the trains in those congested sections, I am of the opinion that more people will be accommodated by the present arrangement and less danger incurred than it would be to make the change, and I therefore recommend an order that the complaints in both of these matters be dismissed.

Thereupon, Dismissal Orders Nos. 177 and 178 were issued.

**Brooklyn Heights Railroad Company.**—Improper operation of gates on trolley cars at Manhattan terminal of Brooklyn Bridge.

Complaint Order No. 85, issued November 13, 1907, p. 722, 1907 Rep.

**Brooklyn Heights Railroad Company.**—Improper operation of trains immediately after change from bridge local service to through service from Manhattan end of Brooklyn Bridge.

Complaint Order No. 86, issued November 13, 1907, p. 722, 1907 Rep.

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**Brooklyn Union Elevated Railroad Company.**—Erection of gates on the Ridgewood-Lutheran cemetery line.

Complaint Order No. 87, issued November 13, 1907, p. 722, 1907 Rep.

Final Order No. 163, issued December 11, 1907, p. 740, 1907 Rep.

Final Order No. 172, issued December 27, 1907, p. 752, 1907 Rep.

See page 367.

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**Coney Island and Brooklyn Railroad Company.**—Additional equipment—Automatic circuit breakers.

Hearing Order No. 88, issued November 13, 1907, p. 722, 1907 Rep.

Final Order No. 134, issued December 4, 1907, p. 733, 1907 Rep.

Rehearing Order No. 166, issued December 20, 1907, p. 749, 1907 Rep.

Case not closed in 1907; see page 723.

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Order No. 89. (See Order No. 35, page 22 herein.)

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**Nassau Electric Railroad Company.**—Inadequate service, Windsor terrace.

Complaint Order No. 90, issued November 15, 1907, p. 722, 1907 Rep.

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**New York City Railway Company.**—Defective equipment, Sixth avenue surface line.

Complaint Order No. 91, issued November 15, 1907, p. 722, 1907 Rep.

Complaint Order No. 128, issued December 4, 1907, p. 732, 1907 Rep.

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**Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company; New York City Railway Company.**—Inadequate service and “Car Behind” nuisance, Broadway line.

Complaint Order No. 92, issued November 15, 1907, p. 723, 1907 Rep.

Complaint Order No. 127, issued December 4, 1907, p. 732, 1907 Rep.

Complaint Order No. 155, issued December 16, 1907, p. 741, 1907 Rep.

**New York City Railway Company.**—Failure to operate cars over route covering part of One Hundred and Twenty-fifth street, part of One Hundred and Thirty-fifth street and Lenox avenue.

Complaint Order No. 93, issued November 15, 1907, p. 723, 1907 Rep.  
Complaint Order No. 126, issued December 4, 1907, p. 732, 1907 Rep.

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**Union Railway Company of New York City.**—Lack of proper designation signs on One Hundred and Thirty-fifth street line.

Complaint Order No. 94, issued November 15, 1907, p. 723, 1907 Rep.

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**Brooklyn Union Elevated Railroad Company.**—Dangerous condition of platform and lack of shelter at Thirty-sixth street and Fifth avenue, Brooklyn.

Complaint Order No. 95, issued November 15, 1907, p. 723, 1907 Rep.  
Hearing Order No. 147, issued December 9, 1907, p. 739, 1907 Rep.  
Final Order No. 173, issued December 27, 1907, p. 853, 1907, Rep.

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**New York Central and Hudson River Railroad Company.**—Blocking of crossing at Twelfth avenue on West Seventy-ninth street.

Complaint Order No. 96, issued November 15, 1907, p. 723, 1907 Rep.

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**Nassau Electric Railroad Company.**—Inadequate service, Bergen street line.

Complaint Order No. 97, issued November 18, 1907, p. 723, 1907 Rep.

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**Coney Island and Brooklyn Railroad Company.**—Lack of destination signs on Smith street cars.

Complaint Order No. 98, issued November 18, 1907, p. 723, 1907 Rep.

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Order No. 99. (See Order No. 38, page 24 herein.)

Vol. II.—2.

**Long Island Railroad Company.**—Inadequate service between East New York and Long Island City.

Hearing Order No. 100, issued November 20, 1907, p. 726, 1907 Rep.  
Final Order No. 181, issued December 31, 1907, p. 764, 1907 Rep.  
Case not closed in 1907; see page 450 herein.

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Order No. 101. (See Order No. 67, page 27 herein.)

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**Brooklyn Heights Railroad Company; Brooklyn Union Elevated Railroad Company.**—Lack of proper destination signs on elevated and surface cars.

Complaint Order No. 102, issued November 20, 1907, p. 726, 1907 Rep.

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**Brooklyn Heights Railroad Company.**—Defective overhead trolley wires at Manhattan terminal, Brooklyn bridge.

Complaint Order No. 103, issued November 20, 1907, p. 726, 1907 Rep.

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Order No. 104. (See Order No. 64, page 27 herein.)

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**Coney Island and Brooklyn Railroad Company.**—Exaction of two fares for continuous trip between Church avenue and Avenue S, on Coney Island avenue line.

Complaint Order No. 105, issued November 22, 1907, p. 726, 1907 Rep.

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**Brooklyn Heights Railroad Company.**—Failure to properly sand rails on Manhattan approach to Brooklyn Bridge.

Complaint Order No. 106, issued November 22, 1907, p. 727, 1907 Rep.

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Order No. 107. (See Order No. 18, page 18 herein.)

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Order No. 108. (See Order No. 80, page 29 herein.)

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**Brooklyn Heights Railroad Company.**—Improper location of transfer point at Nostrand avenue and Malbone street.

Complaint Order No. 109, issued November 27, 1907, p. 729, 1907 Rep.

**Brooklyn Union Elevated Railroad Company.**—Inadequate stairway facilities at Gates avenue and Broadway elevated station.

Complaint Order No. 110, issued November 27, 1907, p. 729, 1907 Rep.

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**Interborough Rapid Transit Company.**—Additional subway service.

Hearing Order No. 111, issued November 27, 1907, p. 729, 1907 Rep.  
Case not closed in 1907; see page 339 herein.

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Order No. 112. (See Order No. 37, page 23 herein.)

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**New York City Interborough Railway Company.**—Proposed change in route and running time of cars.

Complaint Order No. 113, issued November 27, 1907, p. 730, 1907 Rep.  
Hearing Order No. 158, issued December 16, 1907, p. 744, 1907 Rep.  
Final Order No. 176, issued December 27, 1907, p. 760, 1907 Rep.  
See page 553.

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**New York City Railway Company.**—Increase of service on Eighth avenue line.

Hearing Order No. 114, issued November 27, 1907, p. 730, 1907 Rep.  
Opinion of Commissioner Maltbie.  
Final Order No. 171, issued December 27, 1907, p. 750, 1907 Rep.  
Case not closed in 1907; see page 548 herein.

OPINION OF COMMISSION.

(Adopted December 27, 1907.)

COMMISSIONER MALTBIE:—

Upon November 27th the Commission adopted an order directing that an inquiry be held upon December 11th, to determine the adequacy of the service and equipment of the New York City Railway Company upon the line currently called the "Eighth Avenue Line." The company being in the hands of a receiver, a notice of the hearing was served upon Mr. Adrian H. Joline and Mr. Douglas Robinson, receivers for the company, appointed by Judge Lacombe of the United States Circuit Court, as well as upon the secretary of the New York City Railway Company. The receipt of this notice was duly acknowledged by the receivers and by the secretary of the company.

Upon December 11th the hearing was held and evidence taken, but no one representing the company, or the receivers, appeared or offered to present any evidence to show that it would not "be just, reasonable, proper and adequate to direct that the service of said New York City Railway Company, and the receivers of said company aforesaid, be increased and supplemented at the points and times and in the particulars prescribed in the order for the hearing."

The "Eighth Avenue Line" has two northern terminals — one at Eighth avenue and One Hundred and Fifty-ninth street, the other at McComb's lane and One Hundred and Fifty-fourth street. From these two terminals the line runs south

along McComb's lane, Eighth avenue and Central Park West to about Twelfth street; thence down Hudson street to Canal street; through Canal street to West Broadway; down West Broadway, Greenwich, Fulton, Church, Trinity Place, Battery Place and State street to South Ferry. The cars going north run through Whitehall street and Battery Place to Greenwich street, and from thence follow the route just given, except that they go through Barclay street from West Broadway to Church street, instead of through Fulton street. There is also a short branch of line extending from Greenwich street, through Dey street, Washington street and Cortlandt street to the Cortlandt Street Ferry, returning through Cortlandt street to Greenwich street. Ordinarily, all of the cars used upon this line pass over the section between Thirteenth and One Hundred and Forty-ninth streets, but occasionally a few are switched back at One Hundred and Seventeenth street and Fifty-fifth street.

No cars from other lines run over the tracks used by the Eighth avenue cars north of Canal street. The section on Canal street is used by certain crosstown cars. The portion between Canal street and Battery Place is used by the Sixth and Amsterdam avenue cars, and a short section at the Battery is used as well by certain cars going down Broadway.

The only section of this line which is congested by vehicular and street car traffic is that on West Broadway, between Canal street and Cortlandt street; but as the present service is adequate upon this section of the route, and as it is not proposed to recommend that more cars be run below Thirteenth street, the fact of congestion upon West Broadway does not interfere with the proposed increase of service above Thirteenth street. In other words, there is no congestion of traffic upon any portion of the line which will interfere with the execution of the order recommended in this report (see pages 15-17 of evidence).

The evidence taken at the hearing was given by Mr. M. H. Ryan of the engineering staff of the Commission, who had made a careful and thorough investigation of the service and equipment of the line. The observations taken covered ten days in November and December, and were made by Mr. Ryan and seventeen assistants, all employees of the Commission. The counsel also presented as a part of the evidence certain information prepared by Mr. Oren Root, general manager under the receivers, at my request.

Summarizing the evidence presented, the following facts clearly appear (see especially Exhibits 2-5): .

1. The service upon the portion of the line south of Thirteenth street is adequate.

2. During the hours between midnight and six in the morning, the operating schedule of the company calls for a 20-minute headway most of the time. Although this schedule has been sufficient to give every passenger a seat, in my opinion such a service is not adequate for the district above Thirteenth street. Persons ought not to be required to wait twenty minutes upon a street corner, especially during the winter, for a car to take them home. If there were stations or some sort of structures to protect persons from the inclemency of the weather, it might be advisable to require more cars to be run, but in view of the present circumstances, I have recommended that at least six cars an hour be run, reducing the headway from 20 to 10 minutes, above Thirteenth street. Below Thirteenth street the district is almost wholly a business district and the traffic is so very light during the night that it does not seem reasonable to require an increased service even though the present schedule calls for a 20-minute headway. .

3. Upon Sundays the service north of Thirteenth street is more or less inadequate from 10 A. M. to 11 P. M., and there seems to be no reason, except in occasional instances which cannot be foreseen, why a sufficient number of cars should not be run to provide seats for all passengers.

4. The south-bound service upon week days is inadequate during the morning rush hours and in the early part of the evening, when persons are going to the theatres or making social calls. The order recommended for adoption calls for certain reasonable increases in the number of cars run between 7 and 10 A. M. and between 6:30 and 8:30 P. M.

5. The north-bound service is inadequate between 4:30 and 6:30 P. M.—the evening rush hours—and between 10 and 11:30 P. M., when persons are returning from the theatres. The increased service required in the order is not large in either

of these cases, but will be sufficient to reduce the number of passengers standing to an inconsiderable amount.

The order submitted herewith for adoption differs somewhat from the order upon which the hearing was held, but in each case the increases in service called for in the order submitted herewith, are less than those in the order for the hearing. It would be unwise to require unnecessary increases in the service and in my opinion the increases now recommended will be sufficient, provided the company carefully distributes the additional number of cars required so as to provide the additional facilities at the times when most needed. However, if the increases recommended shall prove not to be sufficient, another order may be issued at any time.

Thereupon Order No. 171 requiring an increase in the number of cars operated was then adopted.

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**Union Railway Company of New York City.—Refusal to accept transfers on Jerome avenue cars.**

Complaint Order No. 115, issued November 27, 1907, p. 730, 1907 Rep.  
Hearing Order No. 159, issued December 16, 1907, p. 744, 1907 Rep.  
Final Order No. 182, issued December 31, 1907, p. 766, 1907 Rep.

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**Interborough Rapid Transit Company.—Inadequate service on Second and Third avenue elevated roads to points south of Chatham square.**

Complaint Order No. 116, issued November 27, 1907, p. 730, 1907 Rep.  
Hearing Order No. 160, issued December 16, 1907, p. 744, 1907 Rep.  
Opinion of Commissioner Eustis. See page 31 herein.  
Dismissal Order No. 177, issued December 30, 1907, p. 761, 1907 Rep.

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**Nassau Electric Railroad Company; Brooklyn, Queens County and Suburban Railroad Company.—Improper maintenance of streets.**

Complaint Order No. 117, issued November 29, 1907, p. 730, 1907 Rep.  
Case not closed in 1907; see page 674 herein.

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**Nassau Electric Railroad Company.—Improper maintenance of streets.**

Complaint Order No. 118, issued November 29, 1907, p. 731, 1907 Rep.  
Case not closed in 1907; see page 675 herein.

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**Brooklyn City Railroad Company; Brooklyn Heights Railroad Company; Brooklyn, Queens County and Suburban Railroad Company.—Failure to make repairs on Driggs avenue.**

Complaint Order No. 119, issued November 29, 1907, p. 731, 1907 Rep.  
Letter received from Company stating "Repairs have been made."

**Brooklyn City Railroad Company; Brooklyn Heights Railroad Company.**—Improper maintenance of streets.

Complaint Order No. 120, issued November 21, 1907, p. 731, 1907 Rep.  
Case not closed in 1907; see page 667 herein.

**Interborough Rapid Transit Company.**—Block system, subway local tracks.

Hearing Order No. 121, issued December 2, 1907, p. 731, 1907 Rep.

**Brooklyn Union Elevated Railroad Company.**—Announcement of trains, Brooklyn Bridge terminals.

Complaint Order No. 122, issued December 2, 1907, p. 731, 1907 Rep.

**Union Railway Company of New York City.**—Inadequate service on Jerome avenue in The Bronx.

Complaint Order No. 123, issued December 2, 1907, p. 731, 1907 Rep.  
Hearing Order No. 170, issued December 27, 1907, p. 750, 1907 Rep.  
Case not closed in 1907; see page 407 herein.

**South Brooklyn Railway Company.**—Dangerous condition of platforms on Culver line.

Complaint Order No. 124, issued December 4, 1907, p. 731, 1907 Rep.  
Case not closed in 1907; see page 665 herein.

**Interborough Rapid Transit Company.**—Inadequate service on Third avenue and South Ferry Line.

Complaint Order No. 125, issued December 4, 1907, p. 731, 1907 Rep.  
Case not closed in 1907; see page 438 herein.

Order No. 126. (See Order No. 93, page 33 herein.)

Order No. 127. (See Order No. 92, page 32 herein.)

Order No. 128. (See Order No. 91, page 32 herein.)

Order No. 129. (See Order No. 83, page 30 herein.)

Order No. 130. (See Order No. 82, page 30 herein.)

**Coney Island and Brooklyn Railroad Company.**—Defective condition of rails and cross-overs.

Complaint Order No. 131, issued December 4, 1907, p. 732, 1907 Rep.  
Case not closed in 1907; see page 622 herein.

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**New York and Queens County Railway Company.**—Failure to run through cars between Jamaica and Long Island City via Flushing — Headway.

Complaint Order No. 132, issued December 4, 1907, p. 732, 1907 Rep.  
Case not closed in 1907; see page 537 herein.

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**New York Central and Hudson River Railroad Company.**—Improper maintenance of cross-over switch at One Hundred and Thirty-first street.

Complaint Order No. 133, issued December 4, 1907, p. 732, 1907 Rep.

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Order No. 134. (See Order No. 88, page 32 herein.)

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**Interborough Rapid Transit Company.**—Inadequate service on Ninth avenue elevated road.

Hearing Order No. 135, issued December 6, 1907, p. 734, 1907 Rep.  
Case not closed in 1907; see page 438 herein.

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**Railroad and Street Railroad Corporations and Common Carriers.**  
—Stockholding in other similar corporations.

Filing Order No. 136, issued December 6, 1907, p. 734, 1907 Rep.

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**Gas and Electrical Corporations.**—Stockholding in other similar corporations.

Filing Order No. 137, issued December 6, 1907, p. 734, 1907 Rep.

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**New York Central and Hudson River Railroad Company.**—Noise in operating in Park avenue at Eighty-ninth street between 2 and 3 A. M.

Opinion of Commissioner Eustis.  
Dismissal Order No. 138, issued December 6, 1907, p. 735, 1907 Rep.

## OPINION OF COMMISSION.

(Adopted December 6, 1907.)

## COMMISSIONER EUSTIS:—

A copy of the complaint in the above matter was sent to the railroad company, and they made reply, and after the reply was received it was referred to the undersigned to investigate and report.

The reply of the New York Central Railroad admits the making of considerable noise in the vicinity mentioned by the complainant at the time named, two to three o'clock in the morning, but says that the same is caused in a large degree by the regular operation of their road in that section, as large numbers of trains pass both north and south, and that the traffic upon said lines during the day time is so great that all of their repair work upon the four tracks in that section must be done in the night time as far as possible.

And the defendant further alleges that the noises are not unnecessary but incident to the character of the work, and that the work is being done with all care, and that the same is nearly completed.

This matter was investigated by one of the inspectors of this Department, who reported that there was considerable noise in the night time caused by the unloading of rails, hammering, and the whistling and escaping of steam from steam engines by passing trains; but that he did not consider the noise a nuisance but a necessary evil incident to the running of such a railroad through a tunnel in the heart of the city.

I beg, therefore, to report that, in my opinion, the complaint is not well founded; that the defendant is under obligations to the whole public of the city of New York in making very extensive changes in their line along Park avenue and at Forty-second street, all of which to a very marked degree interferes very greatly with the regular running of trains, and that it is only a wise protection on the part of the railroad to do as much of their repair work in the night time as possible. In fact this Commission has had evidence in some of its hearings that a large part of the delays on the surface roads of this city are caused by repair work being done by railroad companies in the day time, and that such delays would be greatly eliminated if the repair work were done at night. This same principle would apply to the work of the New York Central in a greater degree on account of the large number of trains being handled by this road; and believing that the work of repairing the tracks will be very shortly completed, and that the other noise complained of is only such noise as is incident to every large steam railroad.

I respectfully submit that the complaint be dismissed without trial.

(No formal Complaint or Hearing Order was issued in this matter.)

**Brooklyn Union Elevated Railroad Company.—Defective condition of west-bound tracks on Brooklyn Bridge near Manhattan terminal.**

Complaint Order No. 139, issued December 9, 1907, p. 735, 1907 Rep.

(Letter received from company stating that it with the co-operation of the Department of Bridges had planned extensive improvements to tracks on the bridge and that in the meantime arrangements had been made to keep the present tracks in safe condition.)

**New York Central and Hudson River Railroad Company.—Inadequate transportation to and inadequate facilities at Mount Hope Cemetery.**

Complaint Order No. 140, issued December 9, 1907, p. 735, 1907 Rep.

**New York City Railway Company.**— Noisy switch in front of hospital at western terminus of the Fifty-ninth Street Cross-town line.

Complaint Order No. 141, issued December 9, 1907, p. 736, 1907 Rep.

**Coney Island and Brooklyn Railroad Company.**— Defective condition of tracks and switches at Atlantic avenue and on Pacific street.

Complaint Order No. 142, issued December 9, 1907, p. 736, 1907 Rep.

**Coney Island and Brooklyn Railroad Company.**— Dangerous condition of curve from Main street into Prospect street.

Complaint Order No. 143, issued December 9, 1907, p. 736, 1907 Rep.  
Case not closed in 1907; see page 621 herein.

**Nassau Electric Railroad Company.**— Lack of traffic protection on New Utrecht avenue at grade crossing, danger to traffic due to pole line in middle of roadway, Sea Beach Line.

Complaint Order No. 144, issued December 9, 1907, p. 736, 1907 Rep.

**Interborough Rapid Transit Company.**— Inadequate service on Third Avenue Elevated Line.

Hearing Order No. 145, issued December 9, 1907, p. 736, 1907 Rep.  
Case not closed in 1907; see page 441 herein.

Order No. 146. (See Order No. 30, page 21 herein.)

Order No. 147. (See Order No. 95, page 32 herein.)

**New York City Railway Company.**— Overhauling and repair of cars.

Hearing Order No. 148, issued December 11, 1907, p. 739, 1907 Rep.  
Opinion of Commissioner Maltbie.

Final Order No. 179, issued December 30, 1907, p. 762, 1907 Rep.  
Case not closed in 1907; see page 604 herein.

\*[The carrying capacity of the system is reduced by the defective condition of the cars.  
The Commission is justified in requiring the company to so maintain its equipment as to reduce car noises to a minimum.  
The company should be required to put its cars in a clean and neat condition.]

\* See footnote, page 9.

**OPINION OF COMMISSION.**  
(Adopted December 30, 1907.)

**COMMISSIONER MALTBIE:**—

"As the Commissioner designated to hear the evidence and to present a report as to whether an order should be adopted by the Commission directing that certain improvements, repairs and additions should be made to the cars and car equipment of the New York City Railway Company, I submit the following:

Notice of the hearing was duly served not only upon the secretary of the New York City Railway Company, but also upon Mr. Adrian H. Joline and Mr. Douglas Robinson, receivers, appointed by Judge Lacombe of the United States Circuit Court. Upon December 21st the hearing was held and evidence taken, but no one representing the company or the receivers appeared or offered to present any evidence to show that it would *not* be just, reasonable, safe, adequate and proper to issue the order proposed. However, a communication was received from the receivers and was offered in evidence by the counsel to the Commission which stated:

'It is of course most desirable that every car should receive a thorough inspection followed by such repairing as will put it in first class operating condition. The condition of the rolling stock when we took possession was deplorable. The main cause of this was apparently the neglect of the company in prior years to keep it at all times in first class condition.'

The evidence presented at the hearing was given by Mr. A. W. McLimont, the electrical engineer of the Commission, who had been directed by the Commission to make a thorough examination of the equipment of the company and to report the exact facts. In this work, which covered the greater portion of October and November, Mr. McLimont was assisted by four electrical engineers, one mechanical engineer and a number of transit inspectors, all employees of the Commission. They personally inspected some 1,600 cars out of a total of about 2,000 cars now being operated by the company, and 452 cars were examined in detail in the car houses while standing over "pits," by the engineers of the Commission. They also carefully examined the power houses, sub-stations, car houses and shops. The facts found by Mr. McLimont and his assistants were presented in a report which was sworn to and offered in evidence, a copy being placed at the disposal of the company or the receivers. This report is very comprehensive and complete, giving in detail the exact condition of every car and structure examined.

The condition of the 1,600 cars at the time of the observation is reported by Mr. McLimont to be as follows:

Total number of cars.....	1600
Total number of cars with dash boards needing painting.....	98
Total number of cars with bodies needing painting.....	766
Total number of cars with panels broken and unpainted.....	169
Total number of cars with flat wheels.....	401
Total number of cars with rattling and loose windows, doors, etc.....	786
Total number of cars with gear noises (clattering due to dry and worn gears and pinions).....	1006
Total number of brass noises (worn and dry bearings).....	77
Total number of cars with broken glass.....	192
Total number of cars operating without headlights.....	249
Total number of cars operating with dim headlights.....	82
Total number of cars filthy.....	<u>105</u>

Combining certain of the items in the above table, it is found that one-quarter of the cars had flat wheels; that one-half of them needed painting in part or in whole; that one-half rattled; that two-thirds had gear noises; that one out of every six was operated without headlights and that over 100 cars were "filthy." Upon an average there were nearly five defects to every two cars. This does not mean that every car needed repairs of some sort or other, but upon an average there were between two and three defects for each car, for many of the cars were defective in several regards.

The condition of 452 cars examined more in detail while standing over the "pits" in the car houses is reported to have been as follows:

Total number of cars inspected.....	452
Total number of cars with defective trucks.....	115
Total number of cars with flat wheels.....	84
Total number of cars with defective brakes.....	<u>83</u>

Total number of cars with gear troubles (excessively worn).....	242
Total number of cars with gearing troubles (excessively worn and loose).....	154
Total number of cars with motor troubles.....	258
Total number of cars with plow troubles (worn and loose parts and pinions).....	17
Total number of cars with controller faults.....	45
Total number of cars with switches broken or missing.....	9
Total number of cars with resistances poorly protected.....	102
Total number of cars with wiring worn or loose.....	159
Total number of cars with headlights broken or loose.....	85
Total number of cars with gates loose, worn or bent.....	3
Total number of cars with platform worn.....	6
Total number of cars with bumper sprung or cracked.....	4
Total number of cars with draw-bar missing or cracked.....	8
Total number of cars with stanchion bent or worn.....	7
Total number of cars with guard rail bent or worn.....	4
Total number of cars with handrail bent or worn.....	9
Total number of cars with grab handles bent or worn.....	19
Total number of cars with running boards bent or worn.....	8
Total number of cars rattling.....	1
Total number of cars with dash board bent or worn.....	57
Total number of cars with dash posts bent or worn.....	18
Total number of cars with glass broken.....	52
Total number of cars with broken curtain cords, etc.....	4
Total number of sign reflectors broken or missing.....	4
Total number of cars needing painting.....	144
Total number of cars with roof gutters bent.....	4
Total number of cars with life guard bent or broken.....	9
Total number of cars with steps insecure or broken.....	38
Total number of cars with no headlight operating.....	41
Total number of cars with panels broken or unpainted.....	1
Total number of cars in filthy condition.....	4

Summarizing the results of this examination, which covered a considerable number of matters not possible to be covered in the other 1,200 cars, it is found that upon an average there were four defects to each car.

The effect of these conditions upon the carrying capacity of the system is reflected by the reports of the repair shops. At one barn where the cars seemed to be in worse condition than at any other, the average daily number of instances where cars were "run in" for repairs during the month of November was nearly 40 per cent. of the number of cars housed there, and upon one day the number of "run-ins" was over 70 per cent. of the number of cars. Upon the whole system during the month of October there were between 12,000 and 13,000 hours that cars were "run-in" for emergency defects, which is equivalent to 30 cars taken off the road entirely for 15 hours during every day of the month. The interference with the operation of the system, due to the bad condition of the equipment is not confined to the loss of time cars are standing in the barns waiting for or undergoing repairs, for when a car breaks down on the line it is out of commission from that moment as well as during the time it is in the shop. It must also be shoved back to the barn and this procedure still further interferes with the schedule, is often the cause of much delay and overcrowding in other cars, and congests vehicular traffic as well.

In their letter to the Commission the receivers state:

"The most frequent causes of breakdown are those peculiarly incident to the operation of cars by the conduit electric system, and differ from the troubles incident to the operation of surface cars by the overhead trolley system. A very large percentage of breakdowns on the road is due to failure of the contact plow."

This is undoubtedly true, but the defects reported by Mr. McLimont have no connection whatever with the conduit system and ought to be remedied regardless of what changes or improvements are adopted in the conduits and the method of transmitting current from the conductors to the motors.

The failure of the company to provide adequate protection to the power cables under the platforms and floors of the cars and the defective condition of the automatic circuit breakers have increased the possibility of the car catching fire. The evidence does not show that the frequent disastrous fires in the car-houses of the company have been due to the defective wiring of the circuit breakers and appliances, but when the evidence clearly shows, as it does, that there is a lack of proper insulation and that there are defective circuit breakers on many cars,

one is led to consider whether the great loss of equipment and of car-houses might not have been due to these defects.

Frequent complaints have been made to the Commission of the noise caused by street cars. The evidence shows that a very large proportion of the cars are noisy, and that if they were properly repaired, wearing parts promptly renewed and the running gear kept well lubricated, the noise would be very greatly reduced. In my opinion, the public should be protected against unnecessary noise, and that, even if the defective condition of the cars did not interfere with the carrying capacity of the system, the Commission would be justified in requiring the company so to maintain its equipment as to reduce car noises to a minimum.

For similar reasons, I have concluded that the company should be required to put its cars in a clean and neat condition. Dirty and filthy cars are not only offensive, but are dangerous to the health of the city.

In the order recommended for adoption, the date fixed when the company shall begin to turn out ten cars per day from the repair shops is February 15th. No representative of the company or of the receivers appeared at the hearing, so that it was impossible to obtain from them an opinion as to when the order should be made operative. However, Mr. McLimont definitely testified that knowing as he did the exact facilities which would be needed by the company to comply with the order and the facilities which they now have, it would be possible for the company to begin and continue turning out ten cars a day upon and after February 15th.

In order to turn out ten cars a day, it will not be necessary to reduce materially the number of cars now being operated upon the lines of the company. Mr. McLimont testified that not more than forty cars would need to be kept out of service at any one time. Indeed, the number of cars which the company has ordered and of which delivery has been promised before February 15th, is several times the number of cars which upon any one day will need to be taken from the service for repairs so as to comply with the proposed order.

The order is made applicable to the entire rolling stock of the company, including the summer as well as the winter cars. Of course, the cars now in use are the cars that should be repaired immediately, but the order has been made applicable to the summer cars in order that by the time these cars are needed, they will have been repaired and put in good condition.

Thereupon Final Order No. 179 was issued.

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**Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company.— Increase of service south of One Hundred and Seventeenth street.**

Hearing Order No. 149, issued December 11, 1907. p. 739, 1907 Rep.  
Case not closed in 1907; see page 530 herein.

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**Interborough Rapid Transit Company.— Increase of service on Sixth Avenue Elevated Line.**

Hearing Order No. 150, issued December 11, 1907. p. 739, 1907 Rep.  
Case not closed in 1907; see page 444 herein.

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**Interborough Rapid Transit Company.— Increase of service on Second Avenue Elevated Line.**

Hearing Order No. 151, issued December 11, 1907, p. 740, 1907 Rep.  
Case not closed in 1907; see page 439 herein.

**New York Central and Hudson River Railroad Company.—** Defective condition of station at Wakefield.

Hearing Order No. 152, issued December 11, 1907, p. 740, 1907 Rep.  
(It was stated at the hearing that a new station would soon be erected.)

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**Order No. 153.** (See Order No. 87, page 32 herein.)

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**Order No. 154.** (See Order No. 82, page 30, herein.)

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**Order No. 155.** (See Order No. 92, page 32 herein.)

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**Order No. 156.** (See Order No. 34, page 22 herein.)

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**Order No. 157.** (See Order No. 84, page 30 herein.)

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**Order No. 158.** (See Order No. 113, page 35 herein.)

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**Order No. 159.** (See Order No. 115, page 37 herein.)

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**Order No. 160.** (See Order No. 116, page 37 herein.)

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**Order No. 161.** (See Order No. 32, page 21 herein.)

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**Interborough Rapid Transit Company.—** Tools to be kept in cars for use in case of accident.

Hearing Order No. 162, issued December 20, 1907, p. 745, 1907 Rep.  
Case not closed in 1907; see page 370 herein.

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**Brooklyn Union Elevated Railroad Company.—** Opening gates on both sides of trains at Brooklyn Bridge Terminal.

Complaint Order No. 163, issued December 20, 1907, p. 746, 1907 Rep.  
(Letter received from company stating that it did not believe loading from both sides of cars feasible, but that it was willing to accept the judgment of the Commission in the matter.)

Order No. 164. (See Order No. 64, page 27 herein.)

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Order No. 165. (See Order No. 38, page 24 herein.)

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Order No. 166. (See Order No. 88, page 32 herein.)

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**Long Island Railroad Company.**—Permission to change rate on chicory from Flushing to Long Island City.

Tariff Order No. 167, issued December 27, 1907, p. 749, 1907 Rep.

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Order No. 168. (See Order No. 80, page 29 herein.)

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**Union Railway Company of New York City.**—Extension of Morris Avenue Line north of One Hundred and Sixty-first street.

Complaint Order No. 169, issued December 27, 1907, p. 750, 1907 Rep.

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Order No. 170. (See Order No. 123, page 38 herein.)

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Order No. 171. (See Order No. 114, page 35 herein.)

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Order No. 172. (See Order No. 87, page 32 herein.)

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Order No. 173. (See Order No. 95, page 33 herein.)

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Order No. 174. (See Order No. 77, page 29 herein.)

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Order No. 175. (See Order No. 78, page 29 herein.)

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Order No. 176. (See Order No. 113, page 35 herein.)

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Order No. 177. (See Order No. 116, page 37 herein.)

Order No. 178. (See Order No. 84, page 30 herein.)

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Order No. 179. (See Order No. 148, page 41 herein.)

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**Steam Railroads.—Establishing a uniform system of accounts.**

Order No. 180, issued December 31, 1907, p. 763, 1907 Rep.  
Case not closed in 1907; See Vol. I, page 493.

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Order No. 181. (See Order No. 100, page 34 herein.)

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Order No. 182. (See Order No. 115, page 37 herein.)

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Order No. 183. (See Order No. 67, page 27 herein.)

## OPINIONS AND REPORTS OF 1907 NOT HERETOFORE PUBLISHED.

### Annual Budget, Public Service Commission for the First District.

\*[The Public Service Commission, being a State board, need not submit a present budget to the Board of Estimate and Apportionment.

The unexpended balance appropriated for the rapid transit board may be expended by the Commission.]

#### Report of the Committee on Budget and Method of Obtaining Funds for Expenses of Commission and Salaries other than those of the Commission, its Counsel and Secretary.

Messrs. Bassett, Whitney and Hollmann have compared the provisions of the Rapid Transit Act touching the subjects referred to this committee, and the Public Service Law, and find that in regard to this subject the provisions are substantially identical. On this account your committee have inferred that the method heretofore employed by the Board of Rapid Transit Commissioners in this regard will be presumably correct to be adopted by the present Commission, and it is likely that the Board of Estimate will prefer this method of caring for this subject.

The requests for estimates for budget heretofore sent out by the Board of Estimate apply to city departments, bureaus and boards. As ours is a State board with a separate provision for its expenses, this request does not relate to us. The method followed by the Rapid Transit Board has been:

First — In the latter part of each year it has made up, as nearly as possible, an estimate of its needs for expenses the following year. This was done in order to facilitate the work for the Finance Department, so that it might not have to pass on a large number of small requisitions. Last year this requisition was made December 27th, and was for the sum of \$826,500. Of this amount the Board of Estimate assented to \$742,500, leaving about \$84,000 to be assented to later, if necessary, on account of the planning and letting of new work.

Second — For the salaries of the Rapid Transit Commissioners an application was made each year to the Appellate Division of the First District. The salaries of the new commissioners, their counsel and secretary are paid by the State Treasurer.

Third — If the requisitions of the Rapid Transit Board for expenses were not complied with, they had the right to place the requisitions before the Appellate Division, whose decision would be final. We understand, however, that this was never done.

To come now to the method that we should employ to obtain funds for payment of expenses and salaries other than those of the Commission, counsel and secretary:

First — There is no necessity of making up a present budget and submitting it to the Board of Estimate.

Second — We may expend the unexpended balance for any proper purposes of our Commission, and during the remainder of this year, if this fund is not sufficient, we may make a requisition for a further sum.

Third — In the month of December we should serve upon the Board of Estimate and Apportionment a statement of requisition which will approximately cover our needs for the year 1908. This will not prevent our making further requisitions in the year 1908, if they become necessary.

Fourth — In case the Board of Estimate does not comply with this request and honor this requisition, it will be our duty to make our request to the Appellate Division, whose determination will be final.

July 5, 1907.

(Signed) EDWARD M. BASSETT,  
WM. McCARROLL

\* See footnote, page 9.

## Brooklyn Bridge.— Extent of jurisdiction of commission over.

\*[The Commission has jurisdiction only over the service afforded by the operating companies on Brooklyn Bridge and not over the structure itself.]

At the time the Commission was created there was great congestion during rush hours at Brooklyn Bridge and a committee upon the subject was appointed, which presented the following opinion:

### OPINION OF COMMISSION.

#### COMMISSIONER BASSETT:—

Your committee on the Brooklyn Bridge, after a careful consideration and study of existing conditions, makes this preliminary report, for the purpose of setting forth the remedies that are being provided to lessen present congestion.

It should, from the outset, be understood that our jurisdiction extends only to the service afforded the public by the operating companies, and not to the structure itself.

The extreme congestion on the Brooklyn Bridge is the result of many years growth. It arises from the fact that this bridge is to-day substantially the only avenue between the two greatest boroughs of the city, and when it is considered that eight elevated lines in Brooklyn are focused into the one elevated bridge track and twice as many Brooklyn surface lines are focused into one trolley track, it can be readily seen that some congestion is inevitable until the traffic can be decreased. Human ingenuity cannot, in the space of a few months, bring relief to a situation, the fundamental cause of which is that too many lines of transit and too great a number of people are compelled to use it. The only entire cure for the Brooklyn bridge crush is to deflect to other river crossings part of the people that are now compelled to use this bridge.

While it is likely that various devices would mitigate the present bridge crush, and some of these devices might well have been put in operation during the past four or five years to accomplish this result, the fact remains that at the present time and for the last nine months, the city has been pursuing a definite policy of bridge relief, that will soon produce increasing benefits, and it would not be wise to insist on the adoption of minor alleviations that would require a large expenditure of time and money to install and which would run counter to the plans which the city authorities have decided upon.

The definite plan decided upon by the city is that there shall be through trains in rush hours, so that the extra change at the Brooklyn terminal shall stop. This through service and the better sorting of passengers at the Manhattan terminal will later be facilitated by the construction of the large station to be erected on the site of the Staats-Zeitung building, where the land is now being cleared for this purpose.

We will proceed to enumerate the various steps of relief now in preparation:

- Under the orders of this board, the equipment of the various operating companies is being improved, to avoid break-downs and minor delays.

- New types of surface cars with double size platforms for quick loading are being designed.

- Increased policing, to prevent disorder, and increased traffic regulation on the roadways, to prevent delays to surface cars. This feature is under the charge of the Bridge and Police Departments.

- The elevated terminal at the Manhattan end of the bridge is now being lengthened so that six-car trains can be placed in the pockets and entered more conveniently than now in the evening rush hours. It is expected by the Bridge Department that, on the completion of this work in a short time, the change of cars at the Brooklyn end of the bridge, which has been a source of such annoyance and delays for many years, will cease.

- Plans for rearrangement of the Brooklyn terminals are being prepared so that on the completion of the last mentioned improvements additional empty trains can start in Brooklyn.

- The Sands street viaduct, now fully approved and about to begin construction, will carry the surface cars above Sands street and prevent constant delays from grade crossings at that point.

\* See footnote, page 9.

7. The completion of the Battery tunnel within the next few months will deflect a considerable part of the travel from the Brooklyn bridge. This will constitute the first fundamental remedy for the bridge congestion, inasmuch as it will be the first provision of an alternative method of crossing the East river by rapid transit.

8. The connection of the Broadway, Brooklyn, elevated road with the Williamsburg Bridge, so that through trains may be run to the station under Delancey street. The completion of this connection and the Delancey street station, both of which are now under construction, will attract part of the Williamsburg and Ridgewood travel to come to Manhattan by that bridge instead of by the Brooklyn Bridge, as at present.

9. The completion of the Centre street subway leading from the Williamsburg Bridge to the City Hall, Manhattan, now under construction, and expected to be completed in about two and one-half years, will probably afford the greatest relief to the Brooklyn Bridge of any single improvement now under contract, except the Manhattan Bridge. It will deflect a large portion of the Brooklyn Bridge travel to the Williamsburg Bridge, as the new route will afford the more direct line for Williamsburg, Ridgewood, East New York, Brownsville, Woodhaven and Jamaica.

10. The completion of the Manhattan Bridge, now in course of construction, and which is expected to be finished soon after the Centre street subway, will afford still more substantial relief to the Brooklyn Bridge. The bridge will have four sets of tracks for trains, instead of one set, as on the Brooklyn Bridge. It will connect through to City Hall, Manhattan, by way of the Centre street subway.

It will be seen from the foregoing that the city is now following a definite policy of Brooklyn Bridge relief.

Constant day and night inspection is carried on by this Commission as a basis for suggestions or orders to the operating companies for improvements.

Respectfully submitted,

EDWARD M. BASSETT, Chairman,

WILLIAM McCARROLL,

JOHN E. EUSTIS.

Dated October 3, 1907.

### Brooklyn Bridge.—Regulation of vehicular traffic during rush hours.

\* [Recommendations made to the Bridge Commissioner that during rush hours no heavily loaded wagons be allowed to cross the Brooklyn Bridge and that all vehicles crossing during these hours be required to keep off the car tracks.]

Commissioner Bassett read the following resolution and then made a brief statement regarding it:

Whereas, The Bridge Department has compiled data showing that heavily loaded vehicles crossing Brooklyn Bridge in rush hours and the use of the surface tracks by the lighter vehicles are one of the main causes of delays and slow moving of surface cars over the Brooklyn Bridge, and these findings of the Bridge Department having been confirmed by investigation made by this board:

Resolved, That this board earnestly recommends to the Bridge Commissioner as a means of increasing the usefulness of the Brooklyn Bridge for the traveling public in rush hours, that he put into force two rules substantially as follows:

First. That during rush hours, from 7 to 9 A. M., and from 5 to 7 P. M., no heavily loaded wagons be allowed to cross the Brooklyn Bridge, and

Second. That all vehicles crossing the Brooklyn Bridge during these hours be required to keep off the car tracks.

Commissioner Bassett: "Inspection during the last two months has discovered that one of the main causes for the slow movement of the trolley cars in rush hours is this blocking on the bridge roadway by heavily loaded teams that break down and by lighter vehicles that get on the tracks between the electric cars. The figures of the loss of time caused by overloaded trucks show that in July 192 minutes of stoppage was caused from this reason alone, and a total of stoppage due to vehicular traffic on the bridge amounted to 367 minutes. In the month of

\* See footnote, page 9.

August these figures were 20 minutes, due to overloaded trucks and 402 minutes due to all vehicular traffic. Slow movements caused by vehicular traffic amount to as much more. The number of overloaded trucks that go over in rush hours is small, averaging only about eight vehicles during a single rush period, but out of those eight fully loaded vehicles, there is very great liability of one or more breaking down and causing the delay of thousands of people. We have carefully considered whether these regulations would be a hardship to the truckmen and merchants of the city, and have concluded that as the number of these heavily loaded trucks is so small and as it will be possible for them to go either before or after the rush hours or to cross the other bridge or ferries, it will benefit the greatest number to promulgate these rules. At the end of a hard day's work the horses seem to be in a weakened condition and going over the bridge with its high grades in the evening rush hours causes stoppages. I wish to say, too, that the same offenders have broken down one time after another and in some cases it has almost looked as though they depend upon getting in a steep part of the bridge and having the cars push them over with the help of poles in the height of the rush hours. This is a practice that can so easily be remedied without hardship to many that for the sake of the travelling public, it seems entirely right to put it into force. We have conferred with the Bridge Commissioner on these matters and are working in entire harmony with him.

In case of the lighter vehicles, the trouble is that they dash into the spaces between the trolley cars and run ahead and then cannot find an opening in the line of trucks to get out and into the stream of wagon traffic again, and the number of people rushing in in that way often completely fills up the space between the trolley cars, destroying all freedom of movement and thus obstructing traffic. Under the charter, the Bridge Commissioner is the one to promulgate these rules."

Chairman Willcox: "They could, however, be put into effect by the Bridge Commissioner."

Commissioner Bassett: "They could have been, and will be if the Bridge Commissioner, as he no doubt will, will follow our suggestions in this respect."

Commissioner Eustis: "I think he has power to keep the trucks off the bridge at all times. I think an overloaded truck should be kept off at all times."

Commissioner Bassett: "We are not using the words 'overloaded'—it is 'heavily loaded.'"

Chairman Willcox: "Do you know that the Bridge Commissioner has any rules relating to the bridge traffic?"

Commissioner Bassett: "Yes, he has."

Chairman Willcox: "But nothing to affect the points that you wish to make."

Commissioner Bassett: "There is nothing that substantially affects these points."

The resolution was adopted.

October 11, 1907.

### Additional Subway for Manhattan and The Bronx.

\*[The Broadway-Lexington Avenue Subway route as modified ought to be constructed.]

No connection should be made with present subway at Forty-second street, as the present subway has all the traffic it can handle and competitors of the Interborough would be at a disadvantage in bidding for operation.]

#### REPORT OF COMMITTEE.

The Committee of the Whole presented to the Commission the following report of its sub-committee, consisting of Commissioners Maltbie and Eustis, upon the matter of additional subways for Manhattan and The Bronx:

December 30, 1907.

*To the Public Service Commission for the First District.*

SIRS:—Your committee appointed to report upon additional subways for Manhattan and the Bronx, beg to submit the following report:

The urgent need for the immediate construction of another rapid transit subway in Manhattan and the Bronx needs no proof. Every person who uses the present lines knows that they are congested, that the conditions of overcrowding are indecent and that every improvement that can be made will hardly be sufficient to

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\* See footnote, page 9.

## 52 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

keep pace with the growth of traffic prior to the time when a new subway may be opened, to say nothing of relieving the congestion which now exists. The question is not whether a new subway is needed, therefore, but where a new line may be located most advantageously and which of the several routes that are needed should be constructed first.

In the opinion of your committee, the subway which should be started first is the Broadway-Lexington avenue line, running from the Battery up Broadway or Greenwich and Vesey streets to the post-office, thence up Broadway to Tenth street or thereabouts, thence under private property and public streets to Irving place, thence up Irving place and Lexington avenue to the Harlem river, thence under the Harlem river to One Hundred and Thirty-eighth street or thereabouts. Dividing here into two branches, one line would go up Mott avenue to East One Hundred and Fifty-first street, through One Hundred and Fifty-first street and Gerard avenue to Jerome avenue and thence up Jerome avenue to Woodlawn Cemetery; the other line would pass east through One Hundred and Thirty-eighth street to the Southern boulevard, and up the Southern boulevard and Westchester avenue to Eastern boulevard.

From the post office, and possibly from the Battery, the subway would contain four tracks until it reached One Hundred and Thirty-eighth street. The easterly fork would contain at least three tracks and likewise the westerly fork as far as Jerome avenue where there would be four tracks again. This is considered wise because at some future time a subway will probably be built in Eighth avenue to connect with the line up Jerome avenue, and then four tracks will be needed to afford facilities to both lines. The whole line would be underground, except possibly the Southern boulevard and Westchester avenue section. Some money would be saved by building an elevated road on Jerome avenue instead of a subway, but in view of the many obvious objections to an elevated road, in view of the important character of this thoroughfare, and in view of the small saving in cost when the expense of constructing the whole line is considered, your committee recommend that a subway be planned throughout Jerome avenue.

The line thus planned could be connected with the New York Central Railroad at the Mott Haven station, at One Hundred and Thirty-eighth street and at Forty-second street, and suburban trains could be run through to the Battery via Broadway—a more direct route to downtown Manhattan than by the present subway. At this very moment, before the Grand Central station has been reconstructed and while the traffic is being so seriously interfered with by this reconstruction that the number of persons using the Grand Central station is very much less than it will be when the station has been rebuilt and the trains are again running upon schedule time, the present subway is congested by New York Central traffic. The proposed line would relieve this congestion and help handle the additional traffic that will come when the New York Central has completed its work of reconstruction and its lines have been electrified.

The proposed line will also run close to the Steinway tunnel at Forty-second street and the Blackwell's Island bridge at Fifty-ninth street, so that a connection may be made with the crosstown subway under Fifty-ninth street, planned by the Rapid Transit Commission. By either route the residents of Queens will be able to reach the lower portion of Manhattan much more expeditiously than at present.

The Broadway-Lexington avenue line, as proposed, is not a part of the "Tri-Borough route" as originally planned, but by means of the connection through Canal street, discussed later in this report, it has every advantage which the Manhattan portion of the "Tri-Borough route" possesses and certain other advantages which the latter does not have, inasmuch as the Manhattan portion of the "Tri-Borough route" would not tap the Broadway section, between the post-office and Tenth street. It is also possible to make a similar connection with the Williamsburg bridge, and any subway extended by this route into Long Island. At the Battery it could likewise be connected with the present tunnel to Brooklyn or any future subway built east or west of Broadway.

Thus, while the proposed line is to be constructed in Manhattan and the Bronx, it will afford great relief to Brooklyn and Queens.

The value of the Broadway-Lexington avenue route both from the transit and from the financial standpoint is apparent. Below Fourteenth street, it would run through the very heart of the commercial and office centres of the city. It would

also tap the populous district between Forty-second street and the Harlem river, the residents of which at present can reach the lower Broadway district only by a circuitous route. The two branches in the Bronx would tap the sections which are most in need of transit facilities. The Jerome avenue line has been urged for years. The Southern boulevard section would run through a district already well populated and the Westchester avenue section would open up an area which has not developed owing to the lack of transit facilities. Further, the present subway carries the Bronxites by a very devious course from their homes to their offices. The Broadway-Lexington avenue route would shorten the trip very materially. Further, the directness of the line and the few curves (Lexington avenue is almost upon an exact line with Broadway) would safely allow cars to be run at high speed and would lower operating costs.

Inasmuch as more of The Bronx lies east than west of a line continued in a straight line upon the axis of Lexington avenue, the most natural connection of Jerome avenue would be with a future line down Eighth avenue, or a line between Eighth avenue and Lexington avenue, for it is probable that every subway built upon Lexington avenue or east of Lexington avenue will be needed for the portion of The Bronx east of Jerome avenue. But if the Commission were to build the Jerome avenue line and to lease it to the company operating the Broadway-Lexington avenue line under such conditions that it might allow a separate company operating the Eighth avenue to have running powers over the Jerome avenue section, the present connection of this section with Lexington avenue would not interfere with the ultimate normal development.

Attention should be called to the fact that the Broadway-Lexington line as above outlined, is not precisely the same as the Lexington avenue route proposed by the Rapid Transit Commission. The Lexington route, as originally planned, was not sufficiently direct and contained so many curves that the speed of the trains would be interfered with. It was also planned to connect the Lexington avenue line with the present subway at Forty-second street. This is considered objectionable for two reasons; the present subway has all the traffic it can possibly handle with decency, and perhaps more. To add to its burdens by feeding another line into it would be exceedingly unwise. Further, if such a connection were made, any competitor of the Interborough Company would be at a decided disadvantage when bidding for the operating lease. Upon the other hand, the subway as now proposed will not interfere with any longitudinal routes which may be built later. For example, a line connecting with the present subway at Forty-second street and Broadway could be brought downtown via Broadway to Union square, thence down University place, Wooster street and Church street to the Battery.

The estimated cost of the Broadway-Lexington line, including the two branches in The Bronx, would be about \$60,000,000, and with the present traffic conditions in mind, work ought to be begun immediately upon every section. However, if for financial or other reasons it should be found desirable to delay the awarding of the contracts on construction of certain portions of the route until another year, it would be possible at once to begin on the section from the Battery to the Grand Central Station. Within another year the contracts for the section from Forty-second street to One Hundred and Thirty-eighth street could be let, to be followed with the Gerard and Jerome avenue section. By the time the portion from the Battery to Forty-second street would be ready for lease to an operating company the other sections of the route would be under contract, so that even though they were not completed the bidders for a franchise to operate would know when they were to be finished, and a lease could be made for the unfinished as well as the finished portions of the line. Further, if the construction of the entire line were approved by this Commission and by the Board of Estimate and Apportionment, it would be possible to advertise a lease of this route at the same time the lease for the Fourth avenue subway is advertised. Thus any prospective bidder could obtain not only a lease of the Fourth avenue subway in Brooklyn, but also of the very remunerative line up Broadway and Lexington avenue. Owing to the possibility of a physical connection through Canal street these two lines could be run as one system, making the proposition, from a financial point of view, very attractive and remunerative.

Your committee also recommend that plans be prepared at once for a two-track subway from the Manhattan bridge through Canal street to West street. According to

the present plans for the Centre street loop no means have been provided for connecting any of the bridges with the present subway, the elevated roads, the new subway up Broadway or any future subways west of Broadway. Even the Fourth avenue subway from Brooklyn has been planned to run down Centre street without any connection with any subway or elevated road in Manhattan. Such a condition is most inconvenient and inadvisable, particularly in view of the fact that by building a line across town under Canal street any person coming to Manhattan via the Manhattan Bridge could change to the present subway, the proposed Broadway-Lexington avenue subway and each of the four subways to be built west of Broadway without climbing to the street, and also to the elevated roads whose stations are immediately above. It is also possible to make a physical connection with the proposed Broadway-Lexington avenue route and other subways, so that cars could be run through from the Bronx to Fort Hamilton or Coney Island via Manhattan bridge and the Fourth avenue subway. This plan does not interfere with a connection with the Centre street loop, but merely provides for the running of certain trains from Brooklyn through to the North River and certain others down Centre street to City Hall.

The estimated cost of this Canal street line is \$7,000,000, but if it is not considered possible for financial reasons to construct the whole of it at once, it could end for the present just west of Broadway. But it should be constructed at least to this point at an early date, to provide for a connection with the present subway and the Broadway line.

A map submitted herewith shows the two routes recommended for your approval and indicates the relations these will bear to the present facilities for rapid transit in Manhattan and The Bronx, as well as certain of the connections which might be made with future lines.

If the two subway lines above proposed meet with your approval your committee recommend that application be made at once to the Board of Estimate and Apportionment for their approval and for permission to contract for the construction of these two routes as soon as the plans can be prepared.

In connection therewith, the Committee of the Whole recommended the adoption of the following resolution:

Whereas, In the opinion of the Commission a rapid transit system in the Boroughs of Manhattan and The Bronx should be laid out and offered for bids; and

Whereas, The rapid transit system which, in the opinion of the Commission, seems best to meet the requirements of the people of The City of New York is one described as beginning at a point under Battery park, running thence northerly through and under Greenwich street, Trinity place and Church street to Vesey street; thence easterly through Vesey street to Broadway; thence northerly along and under Broadway to Canal street, where connection will be made with a cross-town line hereinafter described; thence northerly to a point near East Tenth street, where the line curves generally in a northeasterly direction and under private property and across East Eleventh street to Fourth avenue, East Twelfth street, East Thirteenth and East Fourteenth street to Irving place; thence northerly along and under Irving place to Gramercy park; thence northerly under Gramercy park to Lexington avenue; thence northerly under Lexington avenue to the Harlem river and under the Harlem river to a point near the intersection of Park avenue and East One Hundred and Thirty-eighth street, where the lines will diverge, the easterly line continuing east along East One hundred and Thirty-eighth street to Southern Boulevard; thence in a generally northerly direction along Southern Boulevard to Westchester avenue; thence in a generally northeasterly direction along Westchester avenue to Eastern Boulevard or Pelham Bay park: the westerly line to begin at a point near the intersection of Park avenue and East One Hundred and Thirty-eighth street and running northerly along Mott avenue to One Hundred and Fifty-first street; thence northwesterly along One Hundred and Fifty-first street to Gerard avenue; thence northerly along Gerard avenue to the intersection of Gerard avenue and Jerome avenue near Clark place, from which the line to extend northerly along and under Jerome avenue to Woodlawn cemetery. Also a crosstown line on Canal street, connecting at Broadway with the other parts of this system, and beginning at the intersection of Canal street and West street, and thence running easterly under Canal street and, with proper connections at Broadway, to

the Manhattan bridge approach, where connection can be made with the Fourth avenue route in Brooklyn already authorized; and

Whereas, Portions of this system have been laid out as separate routes by the former Board of Rapid Transit Railroad Commissioners and approved by the Board of Estimate and Apportionment and the Mayor, and consented to by a majority in value of the owners of abutting property, or by the Appellate Division of the Supreme Court in lieu thereof; and

Whereas, The construction of such a system will require the modification of certain of the said routes; now therefore be it

*Resolved*, That the question of the legality and feasibility of such a system be referred to the Counsel and Chief Engineer to the Commission for a report and to prepare the necessary plans and papers for submission to the Commission.

The resolution was adopted.

### Fourth Avenue Subway for Brooklyn.

On June 1, 1905, the former Board of Rapid Transit Railroad Commissioners laid out the Fourth Avenue Subway route in Brooklyn, as a part of a rapid transit system for the whole city. On July 14, 1905, the Board of Estimate and Apportionment by affirmative vote of all its members except the president of the Borough of Queens, who did not vote, approved the route and the construction of the subway. On July 28, 1905, the mayor gave his approval.

On December 7, 1906, the Board of Estimate and Apportionment adopted a resolution recommending to the Board of Rapid Transit Railroad Commissioners that alternate bids be invited.

First — For construction alone, and

Second — For construction, equipment and operation of various routes, which included the Fourth Avenue and Bensonhurst route.

On July 4, 1907, the Board of Estimate and Apportionment, at the request of the Rapid Transit Board, modified this resolution so as to authorize the Rapid Transit Board to let contracts for construction only.

On June 27, 1907, the Board of Rapid Transit Railroad Commissioners fixed a date for a hearing on the form of contracts for the Fourth Avenue subway. Before the day for the hearing arrived the Public Service Commission succeeded to the powers and duties of the Rapid Transit Board and the question came up whether the Commission should carry out the plan laid out by its predecessor. The following took place in the Commission upon this question:

Commissioner McCarroll presented a resolution, and said:

"Of course it is well known to the Commission, as it is to the public, that the question of the Fourth avenue subway has been under consideration by the Committee of the Commission for some little time. The public has perhaps naturally been somewhat impatient, assuming that the newspapers may have expressed the public sentiment, but it seems to me, Mr. Chairman, that the thinking public should know that in acting on a matter of such importance as this, this Commission was under obligation to take such time as the Commissioners deemed necessary and wise for the proper consideration of the subject, and so while there may have been some impatience on the part of some of those to know the attitude and determination of this Commission, yet the Commission has proceeded with proper deliberation and discussion, appropriate to the importance of the subject. That having been closed, I now desire to offer this resolution :"

*Resolved*, That this Commission proceed at once with the prosecution of the work of the Fourth avenue subway, pursuant to the plan as laid out by the Board of Rapid Transit Commissioners, and duly approved in accordance with law by the Board of Estimate and Apportionment, and that the contracts now before us for

56      PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

such construction be offered for bids and duly let after the same shall have received the final approval of this Commission.

The resolution was moved and duly seconded. Upon the roll call the following statements were made:

Chairman Willcox — "In voting on this resolution, I desire to state that inasmuch as I understand, memoranda are to be filed with the Commission, that the Fourth avenue subway plans were prepared and adopted by the Board of Rapid Transit Commissioners before they went out of office in July last. These plans were adopted after one or two years' deliberation by the said Board. Subsequently, the Board of Estimate and Apportionment, by resolution unanimously passed, approved of the same and practically set aside funds for the construction of the subway in question. It seems to me, therefore, that this whole matter has been duly passed upon, and that the action taken by these two Boards, if not legally, is morally binding upon this Commission. While it is doubtless true that this Commission could refuse to proceed with the advertising of contracts now before it, I believe that such a step should not be taken, except for the most weighty reasons and for causes which were not properly considered by the Board of Rapid Transit Commissioners and the Board of Estimate and Apportionment. Whether the amount of money necessary for the building of this road, in the judgment of any person, could be better applied for the building of some other road, does not seem to me relevant at this time. This Commission has not the power to appropriate money for transit purposes, and inasmuch as the city, through its duly elected board, has practically set aside the funds for the building of this road in accordance with the plans of the Rapid Transit Commission for its construction, this Commission should now proceed to advertise for bidders and to award the contract.

I therefore vote aye."

Commissioner Carroll — "In voting on this motion I prefer not to make any statement, and certainly not an argument, which is scarcely appropriate now; but in view of the fact that this has been done, I would like to submit the following reasons:

As is known to the Commission, I found many reasons which decided my vote for this resolution. I will now specify four. I vote for it, first and foremost, because I am a confident believer in the development and growth of the city of New York. I consider that we cannot be too foresighted and diligent in doing everything in our power to promote this, especially so when enterprising men are spending many more millions to take people to New Jersey and the suburbs than New York has yet spent altogether or will spend for some time to come, including this Fourth avenue and additional systems of transit.

Second, because this is a part and a beginning of a comprehensive system of transit development — the trunk of the lines, so to speak — reaching from one end to the other and serving the whole city, the construction of which we should progress and hasten with all possible dispatch.

Third, because this Fourth avenue route, going as it does over the Manhattan Bridge and through the congested section of travel at Flatbush avenue and Fulton street, supplies another outlet, which will distribute the travel away from the Brooklyn Bridge and thus give relief and local facilities to a large and crowded section, while fulfilling the larger purpose of development and growth of the city.

Fourth, because the city of New York, by its legally constituted authorities, namely, the Board of Rapid Transit Commissioners and the Board of Estimate and Apportionment, has in due form of procedure authorized and approved the construction of this route. We ought to give all respect and weight to its decision thus expressed and follow it in the absence of some commanding reason why we should do otherwise.

I vote aye."

Commissioner Bassett — "Mr. Chairman, in voting 'no' on this resolution, I wish to file this memorandum:

This resolution commits this Board to the building of the Fourth avenue subway beyond the locality of the Long Island Railroad station, and on this account I wish to register my objections briefly in writing. I would be strongly in favor of building it to the corner of Flatbush and Fourth avenues approximately.

While there is much force in the contention that decisive action has been taken by the Board of Estimate and our predecessors, the Board of Rapid Transit Commissioners, and that ours is the somewhat perfunctory duty of carrying out what has already been determined upon, yet under the provisions of the Rapid Transit Act, which gives us power to rescind or alter up to the time of signing a contract, it seems to me that if in the opinion of any member of this Commission the objections to the construction of this subway on the plan proposed are so grave as my own are, he is in duty bound to vote against the proposition. Under the present law I do not think that an operator will be found for this subway when completed, and I consider that I am bound by my oath of office to act according to my best judgment under the law as it now is, and without dependence upon expected future changes. If an operator cannot be found, the city will have to operate the road, and my belief is that for an indefinite time it will be operated at a loss.

The only congestion that the subway will relieve exists between the Long Island railroad station and Manhattan, and a short subway, about one and one-half miles in length, would accomplish this instead of building one thirteen and one-half miles long. The Fifth avenue elevated road south of the Long Island station is not used to more than one-third of its present capacity. Third-tracking that road would double its present capacity, making it possible to transport six times the people that are now carried.

South Brooklyn suffers today from two things: (1) Non-fulfillment by the railroad companies of their franchise obligations, and (2) extreme congestion between the Long Island railroad depot and the borough of Manhattan. The first item is capable of compulsory remedy; a short subway would remedy the second and leave from fifteen millions to twenty-five millions to construct and equip other subways in the downtown district and lower Manhattan for the benefit of all Brooklyn. If \$25,000,000 of the city's money goes into the construction of the Fourth avenue subway and fifteen millions more into its equipment, I fear that other relief now urgently needed for the benefit of all Brooklyn in the congested districts may be indefinitely postponed. A subway terminating in the vicinity of the Long Island railroad station could be used by express trains operated on the Fifth avenue elevated road, which could carry the identical traffic across the Manhattan bridge that would be carried by the proposed subway, thus doing away with any demand for elevated tracks on the Flatbush avenue extension. Later, the subway could be extended to South Brooklyn, when the traffic warrants it.

If the argument is that a municipal subway is justified to open undeveloped sections and increase assessed valuations, then this subway should run in some direction that now has no rapid transit, like Rugby or Eastern parkway. I do not believe in that argument. The Fourth avenue subway parallels existing rapid transit lines, and along New Utrecht avenue it runs for miles underneath the Rapid Transit railroad. Grade crossings must before long be eliminated on New Utrecht avenue, which will mean an elevated structure probably paid for to the extent of one-half by the city, or else the condemnation at enormous figure of the property and franchise now owned by the Brooklyn Rapid Transit company.

For several years past, my opinion has been that the solution of Brooklyn's traffic problem lies in the expenditure of money in the downtown, East river and lower Manhattan districts, and that this region should be attended to before running subways to the suburbs. When I was appointed on this Commission I was, like most other residents of Brooklyn, loath to do or say anything that might mean the loss of the \$26,000,000 dedicated by the Board of Estimate to the Fourth avenue subway. My position at that time could not be better illustrated than by reminding my fellow commissioners that, early in July, I spent a considerable time in pointing out the geographical features of Brooklyn transit, and in general strongly advocated the desirability of the Fourth avenue subway, not having then made a special study of the relation of the enterprise to the Elsberg Law and the contingency of not finding an operator under that law. You will remember that the chairman and Commissioner Maltbie asked me, at that time, to look more especially into the subject of the operating contract under the Elsberg Law. This I proceeded to do, with the result that I found myself unable longer to favor the entire Fourth avenue subway under existing law, and of course I could not act one way and believe another."

Commissioner Maitbie—"I wish to file the following memorandum:

Mr. Chairman, it is with great regret that I feel compelled to vote against the majority of the Commission upon this resolution, and particularly because I realize with what care and thoroughness you have considered every phase of the question. But the facts have convinced me that it would be unwise to proceed at present with the construction of the Fourth avenue and Bensonhurst subway, and I must, therefore, vote in the negative. In my opinion, the city of New York as a whole, and Brooklyn particularly, would be benefited to a far greater degree by the construction of subways in the already congested portion of Manhattan and Brooklyn than by the construction of a line which, in the main, will run through an undeveloped and sparsely settled area, and which will benefit only a small part of Brooklyn.

I do not wish to be understood as favoring the revocation of the route, for lines must be projected into undeveloped suburbs, but it does seem unwise at this time to begin the expensive construction of a subway so largely in an undeveloped district, when there are other areas already densely populated and already far more in need of rapid transit than the southwestern part of Brooklyn.

Further, this district has been provided with transportation facilities to a degree, and with the improvements which this Commission could order, they would be more nearly adequate than those in other sections of Brooklyn, Manhattan, and the Bronx.

However, if it were financially possible to proceed simultaneously with subways in other parts of the city where there is greater need, the objections to the immediate construction of the Fourth avenue subway would be less serious. But the Comptroller has asserted that there is no more money available for subway construction, which means that if the sum of \$25,000,000 or thereabouts is used upon the Fourth avenue subway, the rest of Greater New York must wait for relief until the assessed value of property increases or the constitutional provisions regarding the debt limit are amended.

There is still another point of view. It has generally been admitted by those who favor the immediate construction of the Fourth avenue subway that no bids would be received if a contract for construction equipment and operation were advertised. It is also maintained that the subway will not be self-sustaining for a considerable period of time. If this is true, and those who have favored the subway have presented no tangible evidence to this Commission or its predecessor to prove it is false, the city will be in the position of having constructed a deficit-producing subway, when it is generally conceded that subways in other parts of the city would be self-supporting from the start. Then, too, if the city does not find a company willing to equip and operate the subway when built, the city itself must equip, and this will require an additional outlay of approximately \$15,000,000, which may still further delay the construction of subways in other parts of the city.

But assume that the residents of Brooklyn are entitled to an expenditure of \$25,000,000 for the relief of their transit congestion, where could this sum be spent most advantageously? The Fourth avenue subway, at least that portion of it beyond Flatbush avenue, will not greatly relieve congestion, for there is little congestion beyond Flatbush avenue which could not be relieved by the present facilities when improved; and the main argument in favor of the proposed subway is that it will build up a traffic of its own. If this is true, the line will afford practically no relief to the congestion in the central portion of Brooklyn or on the Brooklyn Bridge, and the vast majority of the residents of Brooklyn—those who do not live in the Fourth avenue and Bensonhurst district—will receive practically no benefit from the construction of this route. Hence, far greater relief would be obtained for Brooklyn as a whole if a portion, at least, of the funds now available were spent upon additional lines in the centre of Brooklyn and the lower portion of Manhattan to relieve the present crush at the Manhattan terminal of the Brooklyn Bridge and to carry those residing in Brooklyn from their houses to their offices without a long walk from the bridge to their offices, 70 per cent. of which are located south and west of the bridge terminal.

In the opinion of many, Mr. Chairman, the question of the advisability of letting these contracts for construction *only* had been settled by our predecessor, the Rapid Transit Commission, and the Board of Estimate and Apportionment prior to July 1st, when we took office. It is also held that if a mistake has been made

the Public Service Commission is entirely relieved from any responsibility. A brief résumé will show to what extent these statements are true:

On October 11, 1906, the Rapid Transit Commission sent a communication to the Board of Estimate suggesting to the Board that alternate bids be invited for a number of rapid transit lines which had previously been approved by the various authorities; one set of bids for construction, equipment and operation combined; and another set for construction alone.

The Board of Estimate adopted this suggestion upon December 7th, and made it valid so far as the following seven lines were concerned:

1. The Seventh and Eighth avenue route.
2. The Lexington avenue route.
3. The Third avenue route.
4. The Jerome avenue route.
5. The Fourth avenue and Bensonhurst route.
6. The Tri-Borough route (so-called).
7. West Farms and White Plains route.

The Rapid Transit Commission decided to proceed first with the Lexington avenue route, the Seventh and Eighth avenue route, and the Jerome avenue route, apparently believing, as the public did generally, that these were the routes which would be of the greatest benefit to the city and which were most urgently needed, as they would relieve areas of great congestion.

The contracts were prepared and alternate bids were invited, but no bids of any nature were received, not even for the construction of a single section.

The natural course to have been adopted then, it would seem, because of obvious defects in the plan of alternate bidding, especially in this instance, was for the Board of Estimate to authorize the advertising of contracts for the same lines for construction alone, and this had been done successfully in the case of the bridge loop subway in Centre street. But this was not done, and the Rapid Transit Commission did not suggest that it should be done, although upon May 31st the Commission did adopt a resolution requesting the Board of Estimate to rescind its resolution of December 7th (authorizing alternative bidding), and to empower the Commission to let contracts for construction alone upon the Fourth avenue and Bensonhurst route. This suggestion the Board of Estimate approved upon June 4, 1907, and upon June 27th the Rapid Transit Commission passed a resolution fixing the last Thursday of July as the date for the hearing upon the form of the contract.

These facts show that the Rapid Transit Commission did not attempt to go further with the lines considered most important and indeed could not have gone any further until a resolution authorizing the Commission to do so had been passed by the Board of Estimate. But it was possible for the Rapid Transit Commission to have requested the Board of Estimate to pass a resolution permitting the advertising of contracts for construction alone in small sections, if it had been considered wise. But instead, the Rapid Transit Commission requested the Board of Estimate to rescind its previous action upon the Fourth avenue route and to authorize the letting of contracts for the construction alone, which was done.

If the case is to be considered as having been closed by this action, the Public Service Commission is already obligated to proceed with the advertising and letting of the contract regardless of the merits of the route over all others. But I cannot believe that the Rapid Transit Commission intended to take such an important and irrevocable step within one month from the expiration of their term of office. In my opinion, they merely wished to progress matters as rapidly as possible, and leave the question to be threshed out upon its merits, recognizing that this Commission has the right at any time to ask the Board of Estimate to rescind its previous action and authorize a different form of contract.

In conclusion, therefore, Mr. Chairman, I am forced reluctantly to vote against this resolution, because I believe that there are other routes which would benefit the city to a far greater degree and which ought to have the preference in view of financial conditions, and because I do not believe that it is incumbent upon us to proceed at once under the resolutions now in force, at least not until the Board of Estimate has been requested to allow the advertising of contracts for construc-

tion alone for small sections of these subways which admittedly would be of greater service to the whole city in relieving the traffic congestion which now exists than the Fourth avenue subway.

I vote no."

Commissioner Eustis—"Mr. Chairman, I have not prepared any written statement in explaining my vote. I simply wish to say if this was a new proposition being considered for the first time, the statements made by Commissioners Maitble and Bassett would be controlling with me, for I consider they have great bearing.

Or, if this so-called Fourth avenue route stood alone by itself and was to be construed without any connection with any other line, I should also feel constrained to vote against it. But, in view of the fact that this line is a part, or a link, of what has been called the Tri-Borough route, running from near the Atlantic ocean to Pelham bay park in the Bronx, I feel it my duty to consider it in that connection, and if I felt by voting against the construction of this route, that the money that has been granted for the construction of it, could be obtained for any other section of the Tri-Borough route, I would then be constrained to vote against it, because I believe that if the Manhattan or main route had been first constructed, it would have been a paying route from the start, for everybody knows a subway on Manhattan Island would not have to look for passengers at any time of the day. But I have not the chance, nor has this Commission, of saying where we shall begin the Tri-Borough route. Our predecessors appropriated this money for one end of it and not for the middle, and I believe if we apply the money now to the Brooklyn end of that route and urge and strive for the means to construct the Manhattan and then the Bronx part of it, it will not be very long that that route will be considered a non-paying one, and for that reason I vote aye."

October 2, 1907.

The Chairman announced the resolution as carried.

### Section 9-0-5 of Loop Lines.

\*[Pipe galleries should not be omitted.]

#### OPINION OF COMMISSION.

(Adopted October 2, 1907.)

#### COMMISSIONER EUSTIS:

Your committee, to whom was referred the recommendation of George S. Rice, engineer, dated August 7, 1907, recommending the discontinuance of the pipe galleries in the contract for the construction of section 9-0-5 of the so-called "bridge loop," being that part of the subway in Delancey street, begs to make the following report:

After examination of the plans and specifications, and conferring with the engineer and also with various members of the Commission, while at first it would seem that the recommendation of the engineer had merit, in that the galleries on this section of the subway would not be used to any very great extent, it does appear that some of the pipes along this section of the subway could be put in the pipe galleries, and that to leave out this section would break the continuity of the galleries extending from the Brooklyn bridge to Williamsburg bridge, and, in view of the fact that the city owns the bridges and will own the subway and the galleries, it would seem to be poor judgment at this time to leave such a break in the galleries, and for the further reason that the galleries at the contract price can be constructed now at far less cost than they could be supplied hereafter; therefore, your committee is of the opinion that the galleries should not be omitted from this section of the contract, and that the recommendation of the engineer relating to the same should be disapproved, and submits for adoption the following resolution:

*Resolved*, That the recommendation of the chief engineer, dated August 7, 1907, that the plans and contract for Section 9-0-5 of the "bridge loop" be modified by omitting from said plans and contract the pipe galleries, be not approved.

The resolution was adopted.

\* See footnote, page 9.

## Rapid Transit Subway Construction Company.—Clearing up streets in Brooklyn.

### REPORT OF COMMITTEE.

(Adopted August 23, 1907.)

The street surface work connected with the Brooklyn subway, from Fulton street at Borough Hall station through Flatbush avenue to the Long Island station, referred to this committee, was begun on Wednesday, July 18th. At that time, although the subway for almost the entire distance of Fulton street was completed and considerable progress had been made in paving and finishing the surface, the following objectionable features remained:

1. In front of the Hall of Records on Fulton street large piles of material had accumulated and the sidewalk was in bad condition. At the intersection of Wiloughby and Fulton streets several large openings existed which were in the way of traffic, and almost all of the street at this point was planked over and had not been back filled.

2. Between Court street and Smith street large piles of paving stones and other material impeded traffic.

3. The Smith street crossing was in bad shape owing to the work of the Coney Island and Brooklyn railroad.

4. At Hoyt street station large clumsy bridges encumbered the sidewalks on both sides of Hoyt street. Part of the sidewalk between Hoyt street and Elm place was not paved, most of the street remained planked over and had not been back filled. On the north side of the street another bridge encumbered the sidewalk and Dufield street was full of material.

5. At intersection of Gold street and DeKalb avenue a large space still remained planked over and had not been back filled, by reason of misunderstandings between the subway contractors and the railway companies. The DeKalb avenue shaft was also located at this intersection and will remain, owing to the siding at this point, and was planned to take care of the Flatbush avenue excavating.

6. At Bond street a large opening existed, running for some distance up the street, which was held open on account of the Edison Company's work.

7. Approaching Hanover place the work was in bad condition, sidewalks and vaults being uncompleted and littered with material and the street being unpaved and in most places planked over. Hanover place was encumbered with old building material, some of which the property owners claimed had been there for months, and although the subway was roofed over for 200 feet east of Hanover place, no finishing had been attempted whatsoever.

8. From Nevins street to State street the entire length of Flatbush avenue was given over to the subway contractors, including the adjacent side streets, and only the minimum allowable space was given to traffic and to property owners.

9. At the Long Island station excavating had just begun, so that conditions at this point were not serious.

10. Our first effort was to give immediate relief to Fulton street from Borough Hall station to Hanover place by compelling the contractors and various corporations to agree on minor points causing delays, by forcing completion of many small items of work that were keeping large portions of the street impassable, and by causing the contractors to clear up useless materials and reset the pavements over the whole. This work was completed by August 6th. The paving as now relaid is not in perfect condition and should be improved.

A careful observation of that portion of the subway which yet remains to be completed clearly shows that a similar cleaning-up process can be carried on at Flatbush avenue, from a point 100 feet south of the intersection of Nevins street to the end of State street, and while this work cannot be done with the rapidity of the Fulton street work, there is no reason why by October 1st this section cannot be put into exactly the condition of Fulton street at the present time.

This will afford a great deal of relief, both to upbound department store traffic through Livingston street and Schermerhorn street, and also to the property owners in the immediate neighborhood, who have suffered more and longer than any others along the subway.

This work should be immediately pushed with the following aims in view:

Complete opening up of Nevins street to through traffic direct to Fulton street; the opening up of Livingston street through to Lafayette avenue and the absolute completion of the new trolley lines through these streets at not later than September 25th, the paving over the sidewalks and streets of Flatbush avenue for the entire distance, and removal therefrom of all building materials, as also from the adjoining side streets.

After careful study of all the conditions which govern the completion of this work, including the completion of the subway proper, the work of the sewer and water departments, and of the telephone, gas and electric light companies, we are confident that there is no reason why this work cannot be accomplished. It also seems necessary to open up Nevins street immediately on account of the narrowness of the thoroughfare, but the contractors should be allowed to use the other side streets until October 1 in order that they will have no obstruction to the rapid completion of the work; providing, however, that a free passageway for teams should always be open.

The cleaning up of Fulton street, which to-day is practically accomplished, followed by the cleaning up of Flatbush avenue in the section mentioned by October 1, will leave but two sections, namely, the intersection of Flatbush avenue and Fulton street and the Long Island station, to be completed. At Flatbush avenue and Fulton street, owing to the great difficulty of the work, the delay will be longest, and the work at the Long Island station, owing to its rather open location, will not afford serious inconvenience; and both of these points are well taken care of by the work of the contractors and the engineers and are being pushed with consistent vigor.

We submit with the report a number of proposed resolutions to advance the work of clearing up Flatbush avenue.

Dated, New York, August 22, 1907.

Respectfully submitted,

(Signed) E. M. BASSETT,  
WILLIAM McCARROLL.

Commissioner Bassett presented the following resolution:

*Resolved*, That the Rapid Transit Subway Construction Company be required to remove all material from Nevins street at once and allow that street to be kept entirely open for traffic, and that a direct passageway from Nevins street to Fulton street wide enough to permit two trucks to pass each other shall immediately be planked over and kept open;

And further, That the said company be required to forthwith remove the boiler plant from the middle of Livingston street to some point preferably to the south and out of the way of the proposed new Livingston street surface line;

And, further, That the said company be required to complete on or before October 1, 1907, the work upon the surface of Flatbush avenue from a point approximately 100 feet south of Nevins street to State street; that all back filling, sidewalks, curbs and street paving be completed by that date with the exception of the shafts at Livingston street and Lafayette avenue, which are to be neatly enclosed, and a ventilating opening at Lafayette avenue, the work upon which is confined to a smaller space;

And further, That said company be required to employ night shifts of workmen, if necessary so to do, to complete this work by October 1, 1907;

And further, That after October 1, 1907, all material of any sort shall be removed from Flatbush avenue from a point approximately 100 feet from Nevins street (except that the space at Journeay & Burnham's former store may be used as long as that is vacant), and also the following side streets: Livingston street, Third avenue, Schermerhorn street, Lafayette avenue, Rockwell place, and that these streets shall be and remain entirely clear as to sidewalks, car tracks and pavements.

Commissioner Bassett here stated that the Commission had power to enforce this clearing-up process and that the only probable cost to the Commission would be in the removal of the boiler plant.

George S. Rice stated that when the contractor commenced on that work he submitted a plan and secured a permit to put his plant where it is in the street.

Commissioner Bassett stated that the street is under the Commission's control, and now that Livingston street has been widened the plant stands exactly where the new trolley tracks are to be laid, and this resolution is virtually a command to a contractor of ours to do certain work.

The resolution was adopted August 23, 1907.

Commissioner Bassett then presented the following resolutions:

*Resolved*, That the Nassau Electric Railway Company be required to complete all of its work on the new Livingston street-Lafayette avenue surface line, including the laying of tracks, erecting of poles or stringing of wires, and the relaying of all street pavement from a point approximately 200 feet from Flatbush avenue on Livingston street through Flatbush avenue and to a point approximately 200 feet from Flatbush avenue on Lafayette avenue, on or before September 25, 1907.

The resolution was adopted August 23, 1907.

*Resolved*, That no street openings of any sort shall, while subway construction is going on, be made in Fulton street or Flatbush avenue, after the pavement is once reset over the subway, without a special permit from this Commission.

The resolution was adopted August 23, 1907.

### Condemnation Proceedings under the Rapid Transit Act.

\*[Condemnation proceedings under the Rapid Transit Act are unduly expensive. The Commission is obliged to pay fees and expenses of commissioners after they have been taxed by the court.]

The following reports were made and discussions had concerning expenses of condemnation proceedings.

Commissioner Bassett presented the following report, which, on motion, duly seconded, was adopted:

On the occasion of the presentation of the bill of Mortimer K. Flagg for \$100 for the month of July, 1907, for services as clerk to the condemnation commission appointed to appraise easements taken for rapid transit work along Southern boulevard and Boston road, The Bronx, the entire subject of condemnation under the Rapid Transit Act was referred to me, as a committee of one, for investigation and report. Since that time I have conferred with a large number of officials, some in our office, some in the corporation counsel's office and some in the office of the comptroller.

Condemnations initiated by the Public Service Commission, as successors to the Board of Rapid Transit Railroad Commissioners, are governed by paragraph 40 of the Rapid Transit Act and subsequent sections. This Board is directed to prepare maps and certify them to the corporation counsel, whereupon the corporation counsel applies to the Supreme Court for the appointment of a commission, usually suggesting one name.

The law provides that the Commissioners shall receive as compensation the sum of \$10 per day for each day actually employed, and they may employ the necessary clerks, stenographers and surveyors. The charter provisions governing condemnation of streets, parks and sites for public buildings do not apply in any degree to rapid transit condemnations.

A custom has grown up whereby commissions to condemn property under the Rapid Transit Law take advantage of the latter provision to appoint a clerk to the Commission at \$100 per month. While it is possible that in large and intricate proceedings this may be desirable, it still remains the fact that in ordinary cases the amount of work does not demand any such expenditure. It is customary for the Commissioners to pass a resolution employing a certain clerk and fixing his salary at \$100 per month. It should be noticed that the law gives the Commissioners no power to fix the salary; but a later provision states that all such expense must be taxed by the court after notice to the corporation counsel and paid by the Rapid Transit Board. Therefore, when the bills of such condemnation commissions are taxed by the court, whether for this or any other lawful purpose, it becomes obligatory upon the Public Service Commission to pay them. Our only method of bringing the matter up would be to request the corporation counsel to oppose such items.

There are two condemnations now proceeding wherein such clerks are employed; one which has been working about three years on the easements along Joralemon and other streets, in the borough of Brooklyn (in this proceeding George N. Young has been, and is, acting as clerk at \$100 per month); the other is the proceeding

\* See footnote, page 9.

in The Bronx, wherein Mr. Flagg is clerk. Both of these proceedings are intricate and involve a very large number of parcels, and would justify the employment of clerks if such employment were ever justifiable.

In some months there are numerous meetings and considerable work for the clerk to do between meetings; in others, and during the summer months, there is practically no work, but the pay continues. It should be remembered, however, that a single clerk should cover the entire proceeding, and that it would be difficult to put his pay on a per diem basis.

The Finance Department, in order to save expense on such condemnations other than street openings, which are in a large bureau under J. P. Dunn, organized a distinct bureau, called the Commissioners of Estimate and Appraisal, having offices at No. 257 Broadway, Manhattan, and occupying a position, to some extent, intermediate between the comptroller and corporation counsel. This bureau, now under the charge of Joseph M. Schenck, attends to the clerical work for the various commissions appointed on school sites, docks, etc. Several minor condemnation proceedings under the Rapid Transit Act have also been attended to by this bureau without outside assistance. This bureau makes a pro rata charge against the various boards for which it works, but thus far has made the expense materially less than if each commission had continued to employ its own clerical assistants.

It is clearly in the interest of economy to use this newly organized bureau wherever possible, although the absolute power of the condemnation commissions appointed under the Rapid Transit Act to select their own clerical help must be recognized. To this end I have had a conference with Joel Squier, Esq., assistant corporation counsel in charge of rapid transit condemnations, and he has agreed that so far as he is able he will see that no more special clerks are appointed, and that in general the new bureau shall be used to the utmost possible advantage. I think that, with the co-operation of the corporation counsel and our counsel, and an oral interview with the various commissioners as soon as appointed by the court, this can be accomplished. It does not seem advisable to me that we should formally request the corporation counsel to protest against the bills of Messrs. Young and Flagg.

The duty of favoring or protesting against these and other similar bills rests with the corporation counsel, and while it would certainly be our privilege to protest against any flagrant charges, I do not consider that it would be wise to make these specific items the subject of protest at this time. I believe that we can accomplish more by co-operation with the corporation counsel along this line.

The Brooklyn commission referred to has now been sitting more than three years, and, although it should be recognized that this work has been enormous, it would seem entirely proper that we should communicate with the corporation counsel urging that this work shall be completed and final report filed at the earliest possible date. To this end I recommend the passage of the annexed resolution.

The city charter has recently been substantially amended with a view of hastening street and park condemnations and lessening expense. Provision has been made that \$5 instead of \$10 shall be the compensation for each commissioner in sessions lasting less than half an hour; a limit of time has been placed upon proceedings, and the power of the commissions to select clerks has been taken away. The provisions of the Rapid Transit Act giving unnecessary powers to the commissioners, such as employing clerks and surveyors, etc., is now unique, and, as far as I know, does not apply to other condemnations in this city. It will be well, in my opinion, to see that an amendment to the Rapid Transit Act in this respect is submitted at the next session of the Legislature.

Dated, September 24, 1907.

Commissioner Maltbie—"I have three bills here for stenographic services, in connection with condemnation proceedings, in favor of C. N. Cronyn: One for \$474 even; one for \$465.40, and one for \$411 even. In each case I consider the charges that have been made are above the market rate, and would not justify payment for the sums in the amounts called for. These bills have been taxed by the court. Payment is mandatory upon us, and regardless of the fact that they are high, they must be paid, and so, in view of these facts, Mr. Chairman, I move that they be paid."

Commissioner Bassett—"I should like to express my concurrence in what Mr. Maltbie has said, and to state further that, under the Rapid Transit Act, the

condemnation commissioners are expressly given the power of choosing their own stenographers and clerks, so that it is not at all in the power of this Commission, and it is therefore impossible at present to avoid this very evident payment in increase of market rates."

November 8, 1907.

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### **Metropolitan Street Railway Company.—Line from Manhattan Post Office to Williamsburg Plaza.**

\* [It is not feasible to operate a surface line from the Manhattan Post Office to Williamsburg Bridge plaza.]

Commissioner Bassett presented the following report on the proposed surface line from the Post Office, Manhattan, to the Williamsburg Bridge, recommending that at the present time such a line was not advisable. On motion the report was ordered filed.

The purpose of this inquiry was to discover whether it would be feasible to operate a surface line from Manhattan Post Office to the Williamsburg plaza, for the purpose of deflecting some of the travel from the Brooklyn Bridge, especially in rush hours.

I had several conferences with Oren Root, Jr., on this subject, and he assented to taking the cars and men that now operate between the Grand Central station and Williamsburg plaza, and placing them on the proposed route. I have made an investigation into the number of persons now carried by the route running from the Grand Central station, and also the number now crossing the Brooklyn Bridge, who would be likely to use the proposed line. The surface congestion is already so great between the Manhattan Post Office and Delancey street that, in my opinion, the new route would be apt to do as much harm as good. It would not be proper to stop the operation of the line from the Grand Central to the Williamsburg Bridge, as it is now largely used, especially in rush hours, and it is quite possible that its discontinuance would cause some of the persons now using it to go south to the Brooklyn Bridge. The number of people who would use the proposed line is shown to be very small.

On this account, I report that for the present it is not advisable to take steps to install a surface route, such as has been proposed.

I append hereto the reports from the inspectors' department.

October 23, 1907.

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### **New York Central and Hudson River Railroad Company.—Increase of Rates.**

\*[The Public Service Commission for the First District has no jurisdiction over rates between points outside the district and points within the district over railroads other than street railroads.]

Commissioners Bassett and Eustis, to whom were referred the matter of disposition of communications as to the increase of rates on the New York Central, reported:

The question involved is whether this Commission has jurisdiction over the question of rates over a railroad between points outside of this district to a point within this district. This seems to be clearly provided for in section 5, subdivision 6, paragraph 2:

"All jurisdiction, supervision, powers and duties under this Act not specially granted to the Public Service Commission of the First District shall be vested in and be exercised by the Public Service Commission of the Second District, including the regulation and control of all transportation of persons or property and the instrumentalities connected with such transportation on any railroad other than a street railroad from a point within either district to a point within the other district."

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\* See footnote, page 9.

By section 5, subdivision 3, the Commission for the First District is given jurisdiction over such portions of the lines of railroads other than street railroads "so far as concerns the construction, maintenance, equipment, terminal facilities and local transportation facilities and *local transportation of persons or property within that district*."

Under these provisions it is clear that complaints as to fares between points outside of this district and points within this district over railroads other than street railroads should be referred to the Commission for the Second District.

(Signed) EDWARD M. BASSETT,  
JOHN E. EUSTIS.

July 5, 1907.

## OPINIONS OF COUNSEL, 1907.

### Accidents—Reporting—Commissions for First and Second Districts—Public Service Commissions Law, Sections 2, 5, 47.

OPINION OF COUNSEL.

November 7, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I have before me a letter of October 31, 1907, from William J. Norton, Acting Secretary, asking for an opinion on the question as to which Public Service Commission is the proper recipient of reports upon accidents happening outside of the First District on street railroads operating in both districts.

I am of the opinion that under the Public Service Act such reports should be sent to the Commission for the Second District, as suggested by Chairman Stevens in his letter of October 28th addressed to Chairman Wilcox.

In my judgment, the question is controlled by the provisions of section 47 of the act, which are as follows:

"Each Commission shall investigate the cause of all accidents on any railroad or street railroad within its district which may result in loss of life or injury to persons or property and which in its judgment require investigation. Every common carrier \* \* \* is required to give immediate notice to the Commission of every accident happening on any line of railroad or street railroad owned, operated, controlled or leased by it within the territory over which such Commission has jurisdiction in such manner as the Commission may direct."

I am inclined to the opinion that the references to the district in the first sentence above quoted and to the territory in the second sentence, express the same idea, namely, that the obligation to give notice of accidents imposed upon the common carrier and to investigate the cause of the accidents imposed upon the Commission refers to the same accidents, namely, those happening within the territory of the First District. The question is not entirely free from doubt, in view of the phraseology of subdivision 2 of section 5 of the act, but it seems to me that the provisions of section 47 govern.

Very truly yours,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

### Reports of Accidents Filed with the Commission Not Open to Inspection—Public Service Commissions Law, Section 47.

OPINION OF COUNSEL.

September 10, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I am in receipt of your letter of September 9th, transmitting a communication from George W. Smyth, inquiring whether reports of accidents occurring on the street railway systems, which the Commission has ordered to be filed by the railroad companies, are open to inspection. He says that he is prompted in the inquiry by the fact that he is interested as attorney for the plaintiff in an action arising from such an accident.

It is provided by section 47 that such notices shall not be admitted as evidence or used for any purpose against such common carrier, railroad corporation or street railroad corporation giving such notice in any suit or action for damages growing out of any matter mentioned in the notice.

I am therefore of the opinion that the notices referred to in Mr. Smyth's communication are not open to inspection by him.

Very truly yours,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

**Acknowledgment by Corporations of the Receipt of Certified Copies of Orders of the Commission—Public Service Commissions Law, Section 23.**

## OPINION OF COUNSEL.

August 15, 1907.

*Public Service Commission for the First District, TRAVIS H. WHITNEY, Esq., Secretary:*

DEAR SIR.—I am in receipt of your letter of August 12 inquiring as to the provision of section 23 of the Public Service Commissions Law, respecting notice of corporations to the Commission of the receipt of certified copies of orders, and referring to a letter of William Greenough, said to be an attorney for the New York, New Haven and Hartford railroad.

I think that in the case of such a corporation, the notification to the Public Service Commission of the receipt of its order given by the corporation to which it is addressed must be signed by a person or officer duly authorized, and should be acknowledged by him in the form prescribed by law for the acknowledgment of deeds by corporations to be used in this State. I think, however, that the provision for acknowledgment is merely directory, and that a communication admitting the receipt of an order, if signed by the president, secretary or general manager of the corporation, may be accepted by you without acknowledgment, if you wish to do so, but I do not think an attorney can be presumed to have any authority to admit receipt of such orders except, perhaps, after proceedings before the Commission have been instituted, in which he has entered formal appearance, and that in his case a formal acknowledgment of the notification should be required.

It will not be proper for you to state to Mr. Greenough that such notification may be sent to the Public Service Commission by mail. It is the duty of the railroad company to give the notification to the Commission required by the section of the law, and it is not material how the notice is transmitted, provided it is received, but you may not authorize any corporation to commit its required notification to the risk of the mails.

Very truly yours,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

**Electricity Rates—Discrimination—Discontinuance of Service—Transportation Corporations Law, Sections 65, 66  
—Public Service Commissions Law, Section 72.**

## OPINION OF COUNSEL.

September 13, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I am in receipt of your communication regarding the complaints made by the Mutual Inspection and Adjustment Company in behalf of Henri Mouquin and of Messrs. Vogler and Vogler, both against the New York Edison Company. The first of these complaints refers to an alleged discrimination in charges, and the second to an arbitrary discontinuance of the electric light connection.

It seems to me that both of these complaints are well founded. It was decided in the case of Armour Packing Company against the Edison Electric Illuminating Company, 155 App. Div. 51, that electric lighting companies are by law under an obligation to furnish service without discrimination in price under similar circumstances and conditions. In that case the plaintiff sued to recover payments made to the defendant, on the allegation that the defendant was at the same time and under similar circumstances and conditions furnishing electricity to others at a less rate, and upon demurrer the court upheld the sufficiency of the complaint.

The complaint of Messrs. Vogler and Vogler is also well founded. In Mr. Norton's letter to Mr. Whitney accompanying the complaint, he suggests that a report be made upon the following fundamental legal points involved:

"(a) The right of the New York Edison Company, a monopolistic public service corporation, to cancel their agreements and disconnect service on thirty days' notice, if a customer has paid all bills presented in full.

"(b) The right of the New York Edison Company to increase its rates to customers after contract has been once entered into."

Regarding the first of these propositions, I would report that in my opinion an electrical corporation has no right to cancel and disconnect service arbitrarily, unless the customer is in default in payment of bills duly rendered.

Section 65 of chapter 588 of the Laws of 1890, known as chapter 40 of the general laws, requires that gas companies and electric lighting companies furnish

services on demand to persons who apply for it in writing, and whose premises are within one hundred feet of a gas main or electric wire.

Section 66 provides that the lighting companies may require a reasonable deposit to secure the payment for two months' service. If the applicant for service is willing to make the deposit, and makes a formal demand, it is the duty of the lighting company to make the connection and furnish the service; and it necessarily follows that such a company is without right to disconnect the service arbitrarily. It seems to me equally plain that they have not the right to require a yearly contract as a condition for making the service, for such a requirement in many instances would practically nullify the provisions of section 65 of the law above referred to.

I am also of the opinion that the New York Edison Company has no right to increase its rates to customers after contract has once been entered into. The law of 1905 established a maximum of 10 cents per kilowatt hour; but even if the rate established had been an absolute one, contracts theretofore legally made for a less rate would remain binding upon the company. It is elementary that a legislative act cannot impair the obligation of valid contracts already made.

In both of these cases the complainants have a complete remedy in the courts. In the case of discrimination, a suit may be brought under authority of the Armour Packing Company case above cited, to recover back the excess paid. In the case of disconnection of service, the complainant may make a formal written demand for the connection, and if the company refuses to furnish service he may, under the authority of the section above cited recover a penalty of ten dollars and five dollars for each day during which the refusal continues.

I now consider the power of this Commission in dealing with these complaints. The provisions regarding the supervision and control of gas and electrical corporations are different from those regarding the control of railroads and street railroads. The only provision in the act for orders against gas and electrical corporations is contained in section 72. It is there provided that

"The Commission within lawful limits may, by order, fix the maximum price of gas or electricity to be charged by such corporation or person, or may order such improvement in the manufacture or supply of such gas, in the manufacture, transmission or supply of such electricity, or in the methods employed by such person or corporation as will in its judgment improve the service."

It is obvious that these orders are such as refer to the general service and not to the enforcement of the rights of an individual against a corporation in isolated cases.

If it is claimed that a general method exists requiring yearly contracts as a condition to service, an investigation might be ordered under section 72, and if such method is found to exist, it could be prohibited by order. The same might be said of discrimination in service, although the concrete case presented seems to me to be an isolated case which could not be made the basis of a general order.

If the Commission desires, I will frame an order for such investigation.

Yours very truly,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Electricity—Fixing Rates—Complaints—Public Service Commissions Law, Sections 66, 71.

### OPINION OF COUNSEL.

November 14, 1907.

Hon. MILO R. MALTBIE, Commissioner, Public Service Commission for the First District:

DEAR SIR.—You have asked me to advise whether in my opinion it would be desirable to extend the inquiry as to the reasonableness of the rates of electric lighting companies to the county of Kings, or as I understand it to the whole of the territory of the First District, and whether it would not be advisable to proceed upon our own motion instead of upon the complaint filed by outside parties.

The Merchants' Association proposed to make a complaint against the Edison Electric Lighting Company alone respecting its service and price for electricity, but as the law requires that this Commission shall prescribe the form of complaint, the matter was referred to me. I advised that the complaint be made against all companies serving under the same conditions in the same territory, in order that any question of the legality of the different rates for different companies who are operating in the same territory under the same conditions might be avoided.

There has recently been a decision of a district judge in California to the effect that it is competent for a municipality authorized to fix telephone rates to prescribe different rates for different companies. However, the Supreme Court, in a recent case has raised this question as one of importance, but has not yet answered it, because the decision of that case did not require its answer. The more I consider the question the firmer I am grounded in my opinion that in the case where different gas or electrical corporations are serving the same territory under the same general conditions, the rate prescribed must be uniform for all. This principle does not necessarily apply to railroads and street railroad corporations.

See page 278.

It is primarily a question of policy whether we should extend the present complaint to embrace Kings county or not. Chapter 732 of the Laws of 1905, which prescribes the maximum rate for electricity, provides that the rate shall be ten cents per kilowatt hour in the city of New York except in the Fifth ward of the borough of Queens, and also except that there may be charged twelve cents per kilowatt hour in Kings county. The present maximum rate in Kings county is, therefore, different than that in Manhattan and Bronx. As the Legislature has recognized that different conditions prevail in these different boroughs, and, therefore, that a different rate may be fixed for each, I see no reason for requiring a complainant to include in one complaint the service in these two counties. No criticism can be made of the Commission for considering Manhattan borough first if the complaint is made by an outside party.

The question whether this Commission has power to fix a maximum rate upon a hearing or investigation made upon its own motion, is a more difficult one. My first impression was that such proceedings could be instituted either by complaint or upon the motion of the Commission. Further thought has created a doubt on this point. In Article III of the Public Service Commissions Law, which contains provisions relative to the powers of the Commissions in respect to common carriers, railroads and street railroads, no order can be issued affecting rates except upon a complaint made by third parties. The presumption would be that the same practice in this respect would also apply to rates of gas and electrical corporations, and such was the case in the old Gas and Electric Commission Law, chapter 736 of the Laws of 1905. The Gas Commission had no power to fix rates except upon the proceedings instituted by the complaint of outside parties. In cities of the first class complaints as to price must be signed by one hundred customers or purchasers (Section 71). The object of this provision seems to me to prevent an inquiry as to price unless there is official or general dissatisfaction with it. The law also provides elaborate means for carrying on an investigation instituted on such complaint and there would be no doubt about the question that the complaint must be made by third parties except for one sentence which was incorporated in section 71, which is in other respects taken almost verbatim from the old Gas and Electric Commission Law.

The sentence is as follows:

"If an investigation be instituted upon the motion of the Commission the person or corporation affected by the investigation may be permitted to appear before the Commission at a time and place specified in the notice and answer all charges which may be preferred by the Commission."

This clause inserted in the midst of the section regulating the method of proceeding upon a complaint would seem to refer to this same subject matter, namely, the regulation of price of gas and electricity; but as section 71 limits the causes of complaints filed by third persons to "either the illuminating power, purity, or price of gas, or the initial efficiency of the electric incandescent lamps supplied, or the regulation of the voltage of the supply system used for incandescent lighting or price of electricity sold and delivered in such municipality," and as there are other causes of complaint suggested by section 66 of the law, it may still be that the clause above quoted refers to investigations instituted by the Commission under section 66, which may involve other subjects than the price of gas and electricity. If this clause occurred in any other section than section 71, we should not doubt this fact. In my opinion, therefore, the safe construction is that the action of the Commission in determining the initial efficiency of the electric incandescent lamp supply or the regulation of the voltage of the supply system, or the price of electricity sold, is limited to cases where complaints are filed as provided in section 71, but orders of any other character may be issued upon proceedings instituted by the Commission itself.

If the Commission thought that the price of electricity should be investigated and no person was ready to file a complaint, I would advise that jurisdiction be assumed on the motion of the Commission and the question tested in the courts; but so long as other parties stand ready to file the complaint, I believe that the Commission should not act on its own initiation.

I am sending a communication to the Commission suggesting a form of complaint.

Yours very truly,  
(Signed) ABELE E. BLACKMAR,  
Counsel to the Commission.

## Electricity—Fixing Rates—Investigations—Public Service Commissions Law, Sections 45, 66, 71.

### OPINION OF COUNSEL.

*Public Service Commission for the First District:*

*December 5, 1907.*

GENTLEMEN.—I herewith transmit to you a form of resolution for the investigation of the electric lighting companies of the city of New York and also the Consolidated Telegraph and Electrical Subway Company and the Empire City Subway Company, Limited, which seem to me also within your jurisdiction.

You will notice that the resolution does not involve an inquiry into the organization and capitalization of the companies or into the cost of the manufacture and

70 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

distribution of electricity. The reason why I have omitted these subjects of inquiry is, that I have serious doubts as to whether the law justifies an inquiry into these subjects upon an investigation made on the motion of the Commission.

The Commission has no power under the act, as I believe, to make an order fixing the maximum price of electricity after a hearing made upon its own motion, but can proceed only upon a complaint filed as provided in section 71. As these elements of inquiry which are omitted are pertinent only to the question of fixing the proper price, an inquiry into them cannot be made on the motion of the Commission, unless other provisions of the act expressly authorize it.

A careful analysis of the law shows that an inquiry into these subjects is not expressly authorized except on a hearing made upon a complaint. The provisions of section 71, regarding the method of bringing about an inquiry into the price upon a complaint made by third parties is a strong impression of legislative intent that such inquiry shall not proceed upon the motion of the Commission.

This Commission has no general powers of investigation and cannot exercise such powers except in furtherance of the purposes of the act or as expressly permitted; and as I have reached the conclusion that the act contains no general provisions authorizing an investigation into these subjects and that these subjects are pertinent only to an investigation for the purpose of fixing the price, which can only be had upon complaint, I am of the opinion that we cannot properly include those subjects in the resolution which I present.

With respect to the general powers of investigation, the article of the law which is applicable to gas and electric corporations differs widely from the articles applicable to railroads, common carriers and street railroads. Articles 2 and 3, referring to these latter agencies, contain an express authorization of a general investigation into the general condition and capitalization of the companies (see section 45); but such general authorization is not found in the article relating to gas and electric corporations.

Subdivisions 2 and 5 of section 66 seems to me to authorize such an investigation as this resolution provides for, but I cannot find any warrant in the act for extending it to the subjects which I have omitted.

Yours respectfully,  
(Signed) ABEL E. BLACKMAR.  
Counsel to the Commission.

Electric Current—Sale of, in Cases in which Manufacturer Does  
Not Use Public Property.

OPINION OF COUNSEL

November 15, 1907.

Hon. MILO R. MALTBIE, Commissioner, Public Service Commission, First District:

DEAR SIR.—I am in receipt of your letter of November 13th, asking whether a person owning an electric light plant and supplying current for his own house, may supply current to another person, in the same block, without using the street and without extending wires or allowing mains upon the property of the third party; also whether the rule is different in the case where the wire is run over a third party's premises, but with his consent.

It has been held in the case of *Fanning v. Osborne*, 102 N. Y. 441, that the right to construct and operate a street railway is a franchise which must have its source in the sovereign power and that the construction and maintenance of a street railway by any individual or association of individuals, without legislative authority, would constitute a public nuisance.

I think the same rule would apply to the construction and operation and transmission of electricity where the use of a public street was necessary in the conducting of the enterprise in the State of New York. In a case, however, where no use of the public street or public property is necessary, and the consent of a third party for the use of his property is obtained, as in the case you mention, I think there is no franchise exercised and that no legislative authority is necessary.

I find in a recent text-book, known as Joyce on Electric Law, section 184-a, a statement, based upon a Maryland case not long since decided, that the right to produce and sell electricity as a commercial product without legislative authority or franchise, is a business which is not a prerogative of government, but is opened to all who may desire to engage therein, like the manufacture and sale of any other commercial product, but the use of city streets for the purpose of delivering electricity to the consumer is a franchise which must be derived directly or indirectly from the State.

I am of the opinion, therefore, that one who owns an electric plant may supply current to another person in the same block, without using the street and may extend his wires upon the property of the third party, with his consent, for the purpose of supplying electricity, and may supply the same in that manner without legislative authority or procuring a franchise so to do.

Very truly yours,  
(Signed) ABEL E. BLACKMAR.  
Counsel to the Commission.

**Express Companies — Discrimination and Preference — \$50 Clause in Contract as Affecting Adjustment of Liability — Public Service Commissions Law, Sections 31, 32, 35.**

## OPINION OF COUNSEL.

November 22, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission, First District:

DEAR SIR.—I have your letter of the 6th inst., transmitting the file of correspondence relative to the claim of Spear & Company against the Adams Express Company.

In the letter of Spear & Company to you of the 12th of September last, they say:

" We made a shipment by Adams Express on Nov. 16, 1906, to E. P. Leeven & Co., 475 Broadway, New York City.

" The goods were never delivered by Adams Express Co., and they offered to settle for the lost merchandise for \$50.00.

" They claim that your commission will not allow them to pay more than \$50.00 for any claim.

" Kindly advise us whether they are correct in this assertion, and oblige."

I confine myself to the inquiry contained in this letter, for, although in some of the later letters the complainant seems to have the impression that the Commission is about to enforce the payment of its claim, that is not within the duties of the Commission, and Spear & Company must take such action in the courts as they are advised by their counsel.

The correspondence file does not contain the express receipt referred to in the letters, but I assume it to have been in the usual form and to have limited liability thereunder to \$50, and I also assume, for the purposes of this case, that such a limitation is not affected by the provisions of the Public Service Commissions Law. The Public Service Commissions Law, by sections 31, 32 and 35, prohibits discrimination. Section 32 is especially broad, providing:

" Section 32. *Unreasonable preference.*—No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever."

And I can understand how the general counsel to the express company, looking at it from the company's standpoint, might say that in settling claims in excess of its strict contractual liability it would run some risk of being called to account by one of the Commissions. Going back, however, to the primary purpose of the act, we find that the two underlying evils of discrimination it was intended to prevent was inequality in rates and inequality in service. This case has proceeded beyond that point; there is no objection to the rate charged, and the service is under attack only in that the property entrusted to the express company has been lost. The claim is made for a money equivalent of the goods lost. The only difficulty in answering an inquiry like the present one is that the recognition of excessive or baseless claims might furnish a ready method by which the common carriers, if they so desire, could evade the prohibition of discrimination in rates, that is, a carrier could allow a rebate under the guise of an allowance for property lost or damaged.

But in spite of this difficulty I do not think that there is any authorization for the Commission to interfere with a just and *bona fide* attempt to adjust liability.

Whether the claimants could recover in an action at law more than the \$50 offered in settlement I do not attempt to determine, but I think that even if they could not, the excess payment is a matter between the express company and its stockholders and is not subject to regulation by the Commission any more than would be the extent of its employees' compensation or the adjustment of any other kind of liability.

I should, therefore, suggest that you advise Spear & Company that without considering the details of their claim, that this Commission has no objection to any adjustment they may make with the Adams Express Company, provided that it is a *bona fide* adjustment and not an attempt to evade the prohibition against discrimination in rates or service.

I return herewith the correspondence file transmitted to me.

Yours very truly,

(Signed) ABEL E. BLACKMAR,  
Counsel to the Commission.

See page 238.

**Free Transportation Prohibited, Except Under Contracts for  
Rapid Transit Railroads in New York City—Public Service Commissions Law, Sections 15, 33—Railroad Law, Sections 169, 170—N. Y. State Constitution, Art. 13, Section 5.**

**OPINION OF COUNSEL.**

November 14, 1907.

**TRAVIS H. WHITNEY, Secretary, Public Service Commission for the First District:**

DEAR SIR.—I am in receipt of your letter of November 12, asking advice as to transit inspectors and other agents of the Commission entering upon or riding upon trains or cars of the Interborough Company in the subway, and of other companies, without paying fare.

It is provided by the Public Service Commissions Law, section 15, that every Commissioner, counsel to the Commission, secretary thereof, and every person employed or appointed to office by the Commission or by counsel to the Commission shall be and be deemed to be a public officer; railroad companies and their officers are forbidden to offer or to give to any Commissioner, counsel to the Commission, secretary or any officer employed or appointed to office by the Commission or by counsel to the Commission, any free pass or transportation or any deduction in fare to which the public generally are not entitled; and it is provided that if any Commissioner, counsel, secretary or person employed or appointed to office by the Commission or counsel to the Commission shall violate any provision of this section (15) he shall be removed from the office held by him.

It is provided by the Constitution of the State of New York (Article XIII, section 5) that no public officer or person elected or appointed to a public office under the laws of the State shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit or for the use or benefit of another any free pass or free transportation from any person or corporation or make use of the same himself or in conjunction with another. A person who violates any provision of this section shall be deemed guilty of a misdemeanor and shall forfeit his office on the suit of the Attorney-General.

It is provided by the Penal Code, section 417, as follows:

"Any railroad commissioner or any secretary, clerk, agent, expert or other person employed by the board of railroad commissioners who \* \* \*

"2. Accepts, receives or requests, either for himself or for any other person any pass from any railroad corporation \* \* \* is guilty of a misdemeanor."

It was provided by section 169 of the Railroad Law, now repealed, as follows:

"In the discharge of their official duties the commissioners, their officers, clerks and all experts and agents, whose services are deemed temporarily of importance, shall be transported over the railroads in this State free of charge upon passes signed by the Secretary of State."

Under the provisions of this section it was held that the above (Article XIII, section 5, of the Constitution) did not prohibit the Railroad Commissioners, their clerks, agents and experts from accepting and using passes issued by the Secretary of State for their transportation while engaged in public business. (See Matter of Railroad Commissioners, 11 Misc. 103.)

The Public Service Commission for the First District has succeeded to the powers and duties of the Board of Railroad Commissioners within specified territory: but the scheme provided by the Railroad Law for carrying the expenses of the Railroad Commission provided that the total annual expense, with certain exceptions, should not exceed \$100,000 and should be borne by the several corporations owning or operating railroads, according to their means, to be apportioned by the Comptroller.

These sections of the Railroad Law (169 and 170) were repealed by the Public Service Commissions Law and the scheme for financing the Public Service Commission is different, in that its expenses are paid by the State, in the case of the Commission for the Second District, and in part by the State and in part by the city of New York as to the Commission for the First District. The provision, therefore, which allowed the Railroad Commissioners and their subordinates to accept and use passes for transportation on railroads in the course of their duty was one which was in accordance with the statutory provision that the railroads were to bear the expenses of the Commission, but does not coincide in reason or in principle, with the provisions of the Public Service Commissions Law, that the expenses of the Commission are to be borne by the city or by the State and that free transportation is specifically forbidden.

I do not think that any officer or subordinate of the Commission can legally receive or use free transportation upon any railroad or street railroad within the jurisdiction of the Commission, even in the course of his duty of inspecting or supervising the construction or operation of such railroad, except as hereinafter stated.

With reference to the functions of the Public Service Commission, in respect to rapid transit contracts for the construction, maintenance and operation of subways, it seems to me that there is an exception to the general rule affecting the

Commissioners, and employees of the Commission, under the provisions of section 33 of the Public Service Commissions Law, wherein it is provided:

"Nothing in this act shall be construed \* \* \* to prohibit any common carrier from transporting persons or property as incident to or connected with contracts for construction, operation or maintenance, and to the extent only that such free transportation is provided for in the contracts for such work."

By the terms of the McDonald contract for the construction, maintenance and operation of the Manhattan-Bronx subway and in the contract for the Brooklyn-Manhattan subway, there are provisions which seem to come under this provision of the act. The McDonald contract, in the construction portion, at page 61, reads as follows:

"The contractor will at all times give to the Board and its members, the engineer and the assistants and superintendents under the engineer and any persons designated by the board or its president, all facilities, whether necessary or convenient for inspecting materials to be furnished and the work to be done under this contract. The members of the board, the engineer, and any superintendent, assistant or other person bearing his authorization or the authorization of the board or its president, shall be admitted at any time, summarily and without delay, to any part of the work or to the inspection of materials at any place or stage of their manufacture, preparation, shipment or delivery."

In Contract No. 2 — known as the contract for the Brooklyn-Manhattan subway — there is a clause (page 55) somewhat similar, reading as follows, also in the construction part of the contract:

"The board contemplates and the contractor hereby approves the most thorough and minute inspection by the board, its engineer, and their representatives and subordinates, of all work and materials and of the manufacture or preparation of such materials from the beginning of construction to the final completion of construction and equipment."

Both the Manhattan-Bronx subway contract (page 173) and the Brooklyn-Manhattan contract (page 171) also contain a provision reading as follows, in the operating part of the contract:

"The contractor shall at all times provide all reasonable conveniences for the inspection of the railroad and equipment and every part thereof by the board, its members, its engineers and subordinates. The members of the board, its engineers and subordinates, shall, at any time, upon its authority, have access to any part of the railroad or equipment or to any materials therefor in process of manufacture."

In the construction work it seems to me that the two provisions first mentioned are sufficient, as to these subways, to authorize free transportation to be used by the representatives of the Commission charged, under the direction of the chief engineer, with the inspection of the construction work.

In view of the city's lien on the equipment and the contractor's specific obligations as to maintenance and operation of the subways, I think also that the section of the contract last above quoted is sufficient to authorize the engineers and other subordinates of the Commission to use free transportation to inspect the railroad and its equipment with reference to its maintenance and operation. This is limited to their necessary presence in the stations and cars of the operating company in the performance of their duty of inspection.

Very truly yours,

(Signed) ABEL E. BLACKMAR,  
Counsel to the Commission.

### Grade Crossings — Action Required by the Commission —

Matter of the Grade Crossing of the Long Island Railroad Company and the Sea Beach Railroad Company at Sixty-Fifth street between Fourth and Fifth avenues, Brooklyn — Railroad Law, Sections 60, 61.

#### OPINION OF COUNSEL.

October 3, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I am in receipt of communication of September 27, referring to the grade crossing of the Long Island Railroad and the Sea Beach Railroad Company with Sixty-fifth street, Borough of Brooklyn.

The report of Acting Chief Engineer and Acting Superintendent Sheridan of the Bureau of Highways shows that Sixty-fifth street, at the point of grade crossing

(between Fourth and Fifth avenues), is not a legally or physically opened street. The report further shows that the railroad tracks now cross the proposed street in deep cuts.

Superintendent Sheridan's report refers to the tracks of the New York and Sea Beach Railroad Company. This company no longer exists, having been succeeded by the Sea Beach Railroad Company, which is leased and operated by the Brooklyn Heights Railroad Company. The Sea Beach Railroad Company is classed as a steam surface railroad company, although operated by electricity. (*Barnett v. Brooklyn Heights Railroad Company*, 53 App. Div. 432.) The Long Island Railroad Company is a steam surface railroad.

The procedure of the Board is prescribed in the statute, Railroad Law, sections 60 to 69.

Assuming that the city decides that the construction of the street is necessary, section 61 of the Railroad Law (quoted below in full) requires the Board of Railroad Commissioners to determine, after a hearing, whether the street shall be constructed over or under such railroad or at grade.

If the street is to be carried over the tracks the Board shall determine the height, length and the material of the bridge or structure and the length, character and grades of its approaches.

If the street is to be constructed below grade of the tracks the Board shall determine the manner and method of carrying the street under the tracks and the grades thereof.

If the street is to be constructed to cross at grade the Board shall determine the manner and method of crossing at grade and decide upon what safeguards shall be maintained.

Your Commission has, of course, succeeded to the powers and duties of the Board of Railroad Commissioners.

Section 62 of the Railroad Law provides for the alteration in manner of crossing highways.

Section 64 of the Railroad Law provides for the maintenance of highway bridges over railroads and for maintaining highways passing under railroads.

Section 65 provides that when, under the provision of section 61, a new street is constructed across two or more existing steam surface railroads, as is the case here, 50 per cent. of the cost shall be borne by the city and the remaining 50 per cent. shall be divided between the railroads in such proportions as shall be determined by the Board of Railroad Commissioners. This section also contains further details for approval of work and apportionment of expense by the Board of Railroad Commissioners.

#### Section 61 of the Railroad Law:

*"(Manner of constructing new streets, highways, etc., across steam surface railroads.) When a new street, avenue or highway, or new portion of a street, avenue or highway, shall hereafter be constructed across a steam surface railroad, other than pursuant to the provisions of section sixty-two of this Act, such street, avenue or highway, or portion of such street, avenue or highway, shall pass over or under such railroad or at grade, as the Board of Railroad Commissioners shall direct. Notice of intention to lay out such street, avenue or highway, or new portion of a street, avenue or highway, across a steam surface railroad, shall be given to such railroad company by the municipal corporation at least fifteen days prior to the making of the order laying out such street, avenue or highway by service personally on the president or vice-president of the railroad corporation, or any general officer thereof. Such notice shall designate the time and place and when and where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street, avenue or highway. If the municipal corporation determines such street, avenue or highway to be necessary it shall then apply to the Board of Railroad Commissioners before any further proceedings are taken, to determine whether such street, avenue or highway shall pass over or under such railroad or at grade, whereupon the said Board of Railroad Commissioners shall appoint a time and place for hearing such application, and shall give such notice thereof as they judge reasonable, not, however, less than ten days, to the railroad company whose railroad is to be crossed by such new street, avenue or highway, or new portion of a street, avenue or highway, to the municipal corporation and to the owners of land adjoining the railroad and that part of the street, avenue or highway to be opened or extended. The said Board of Railroad Commissioners shall determine whether such street, avenue or highway, or new portion of a street, avenue or highway, shall be constructed over or under such railroad or at grade; and if said Board determine that such street, avenue or highway shall be carried across such railroad above grade then said Board shall determine the height, the length and the material of the bridge or structure by means of which such street, avenue or highway shall be carried across such railroad, and the length, character and grades of the approaches thereto; and if said Board shall determine that such street, avenue or highway shall be constructed or extended below the grade said Board shall determine the manner and method in which the same shall be so carried under, and the grade or grades thereof; and if said Board shall determine that said street, avenue or highway shall be constructed or extended at grade said Board shall determine the manner and method in which the same shall be carried over the said railroad at grade and what safeguards shall be maintained. The decision of the said Board as to the manner and method of carrying such new street, avenue or highway across such railroad, shall be final, subject, however, to the right of appeal hereinafter given. The decision of said Board rendered in any proceeding under this section shall be*

communicated within twenty days after final hearing to all parties to whom notice of the hearing in such proceeding was given or who appeared at such hearing by counsel or in person."

From the facts as stated in the correspondence it does not appear that any action by the Commission is required until the city has determined that the street is necessary, and applies to the Public Service Commission for a determination of the question whether the street shall pass over, under or across at grade.

I think it would be well to advise the Borough President that the Commission will consider the question when application is made by the city.

Yours very truly,

(Signed) ABEL E. BLACKMAR,

*Counsel to the Commission.*

## Jurisdiction of the Commission over the Municipal Ferry Operated Between Manhattan and Richmond—Words "Include," "Common Carrier," Defined—Public Service Commissions Law, Sections 1, 2, 25-27, 29-40, 45-55.

### OPINION OF COUNSEL.

November 12, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I am in receipt of the copy of the letter to the Commission dated September 6, signed by Frank Rutherford, which raises the question whether the Municipal Ferry operated between Manhattan and Richmond is subject to the jurisdiction of this Commission as common carrier.

I have referred this matter to Mr. Harkness with the request that he make a full digest of the provisions of the act which may have a bearing upon its construction in this respect, and also that he examine and report upon the authorities which are in point. I have received from him an elaborate report upon the subject, which I herewith transmit to the Commission.

I concur in the conclusion reached by Mr. Harkness, that the definition of common carriers contained in section 2 of the act is meant to exclude all common carriers not therein specifically designated. The word "includes" might be held to extend the definition and not limit it; but taking into consideration all of the other provisions of the act, together with the apparent uselessness of this designation, unless it is meant to enumerate the kinds of common carriers who are subject to the provisions of the act, I have reached the conclusion that the word "common carrier" is so limited.

In this connection, I wish to call your attention to the fact that pipe-line companies were originally enumerated within the agencies included in the term "common carrier," but were subsequently stricken out before the bill was enacted into law. This is indicative of an intention on the part of the Legislature to exclude all agencies except those therein enumerated.

I also herewith transmit to you a letter which I have received from Mr. Stevens, the Chairman of the Commission for the Second District. He suggests that if the question of the meaning of the word "common carriers" comes before your Commission, we communicate with the Commission for the Second District before reaching a final decision, and I would suggest that such a communication be made.

Yours very truly,

(Signed) ABEL E. BLACKMAR,

*Counsel to the Commission.*

November 7, 1907.

Hon. ABEL E. BLACKMAR, *Counsel to the Public Service Commission for the First District:*

MY DEAR SIR.—I desire to report upon the question of the jurisdiction of the Commissions raised by the letter of Mr. Frank Rutherford, Secretary of the Raritan Bay Park Association, of 6th September, in which he complains that the refusal of the municipal authorities of the city of New York to grant the application of certain residents of Richmond borough to have the municipal ferry, running from the Battery in the borough of Manhattan to St. George in the borough of Richmond, check and carry the baggage of passengers and to provide facilities therefor at its terminals, works a great hardship upon such residents, and requests this Commission to take action thereon. On receipt of such letter Commissioner McCarroll orally asked you whether in your opinion the Commissions have jurisdiction over ferries and ferry companies.

The Public Service Commissions Law, in its second section, defines the more important terms with which it deals and provides:

Section 25. "*Application of Article.*"—The provisions of this Article" (Article II) "shall apply to the transportation of passengers, freight or property, from one point to another within the State of New York, and to any common carrier performing such service."

## 76 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

Although in some parts of the act words other than "common carrier" are used (as in section 26, which requires "every corporation, person or common carrier" performing a service designated in section 25, to furnish adequate service), I take it to be plain that the operation of that article and, therefore, of the act, so far as it affects common carriers, is controlled by the definition of common carrier in section 2, which is:

"The term 'common carrier,' when used in this act, includes all railroad corporations, street railroad corporations, express companies, car companies, sleeping car companies, freight companies, freight line companies and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this State."

As the words "ferry companies" are not contained in the enumeration in the definition quoted, this entire question resolves itself into one of the construction of the meaning of the word "includes" and its importance is at once made manifest when we consider that upon it depends the question whether the jurisdiction of the Commissions is limited to the carriers enumerated or whether it comprises, in addition thereto, all common carriers engaged in the "transportation of passengers, freight or property" within this State—not ferry companies alone, but navigation companies, towing companies operating on the canals and waterways of the State, and the many other agencies engaged in such transportation.

As to ferries being common carriers, their position as such has long been well recognized, as appears from the quotation from Lord Hale's *de Jure Maris*, cited with approval in *Munn v. Illinois*. In this treatise, written over 200 years ago, Lord Hale said, in speaking of ferries, that the King had

"a right of franchise or privilege, that no man may set up a common ferry for all passengers without a prescription time out of mind or a charter from the King. He may make a ferry for his own use or the use of his family, but not for the common use of all the King's subjects passing that way; because it doth in consequence tend to a common charge, and has become a thing of public interest and use, and every man for his passage pays a toll, which is a common charge, and every ferry ought to be under a public regulation, viz., that it give attendance at due times, keep a boat in due order and take but reasonable toll; for if he fall in these he is finable."

Webster's Dictionary defines the word "includes" to mean:

"Latin, *in* and *cludere*, to shut.

"1. To confine within; to hold; to contain; to shut up; as the shell of a nut includes the kernel.

"2. To comprehend, as a genus the species, the whole a part, an argument or reason the inference; to contain; to embrace; to relate to; to pertain to."

The second part of this definition gives the sense of the word so often adopted by the courts under the *eiusdem generis* rule, that is, where a number of things of a certain character are enumerated after such a word as includes there is embraced therein not only those specified, but all others of a like character and forming part of the same class.

As commonly used, I think the word "includes" is understood in this sense, and as said by Judge Hatch, in *Matter of Goetz*, 71 App. Div. 272, at p. 275:

"'Including' is not a word of limitation, rather it is a word of enlargement, and in ordinary signification implies that something else has been given beyond the general language which precedes it."

The meaning of this word has received extensive consideration in the English courts, and in one of the most interesting cases on the subject (*Jones v. Cook*, L. R. 6 Q. B. 505), despite the fact that the case was a criminal one, ordinarily requiring a strict construction of the act, the court gave to the word "includes" its broader significance. The head note to the case concisely states the facts:

*Head Note.*—"By the Petroleum Act, 1862, § 1, 'petroleum' for the purposes of this act shall include any product thereof that gives off an inflammable vapour at a temperature of less than 100 degrees Fahrenheit. By the Petroleum Acts, 1862 and 1868, 'petroleum' shall include all such rock oil, Rangoon oil, Burmah oil, any product of them, and any oil made from petroleum, coal, schist, shale, peat or other bituminous substance, as gives off an inflammable vapour at a temperature of less than 100 degrees Fahrenheit:—*Held*, that all petroleum proper, whether giving off an inflammable vapour at under 100 degrees or not, was within the acts; and that, therefore, the keeping of any petroleum proper, otherwise than for private use, within fifty yards of a dwelling or storehouse, without a license, was prohibited by section 4 of the Act of 1868.

Blackburn, J., at page 509:

"Taking the intention of the legislature to be shown by the words used in the Acts, I think that the magistrates were right, and that the conviction must be affirmed. There were two petroleum Acts passed; the one enacted, whereas it was necessary to provide for the safe-keeping of petroleum, and

certain products that are dangerous, that 'petroleum shall include any product thereof that gives off an inflammable vapour at a temperature of less than 100 degrees.' That means that petroleum shall mean petroleum, and also includes that which might not otherwise be considered as petroleum, viz., products derived from petroleum, provided those products be of such a nature that they give off those inflammable vapours. Thus throughout the Act 'petroleum' is to be used and considered as including such products as give off an inflammable vapour at a temperature of less than 100 degrees."

To the same effect are *Queen v. Kershaw* (Queens Bench), 6 El. and Bl. 999; *ex parte Ferguson*, L. R. 6 Q. B. 280; and *Pound v. Plumstead Board of Works*, L. R. 7 Q. B. 183.

An interesting and instructive side-light on this general meaning of the word is furnished by a consideration of the other definitions in section 2 of the Act. It is significant that when the meaning of the word defined must, from the nature of the subject matter, be limited, the word used is "means," as—"The term 'Commissioner,' when used in this act means one of the members of such Commission;" but in all other cases recourse is had to the word "includes," as, for example, the word "railroad," as defined, includes various agencies, but the list given in the definition is by no means complete, for omitted therefrom are many instrumentalities in the operation of a railroad. It uses the words "bridges, ferries, tunnels, switches, subways, tracks, stations and terminal facilities," but does not, for instance, specify block signal systems, ties, ballast, road-bed, etc., which from their very nature are important component parts of a railroad and over which supervision is necessary to render regulations by the Commissions effective. It is, of course, unreasonable to suppose that a railroad company would be permitted to say in answer to an order of one of the Commissions to make certain repairs to its roadbed, that such an order was not binding because a railroad, as defined in the act, does not include its own road-bed. Here it is obvious that the word "includes" is not one of limitation.

The reference to ferries in the definition of railroad is applicable only to railroad ferries, but there is this point to be noted in passing, that if ferries were intended to be embraced in the definition of common carrier, there would be no necessity for including them in the definition of railroad.

This meaning, however, is not absolutely controlling, but is further dependent upon the intention of the Legislature to be gleaned from the context of the act, as was stated in effect in the opinion in *Calhoun v. Memphis & Paducah R. R. Co.* 2 Flippin (U. S. Circuit Court) 442, where the court was called on to construe the language of a railroad mortgage. In that opinion, at page 445, it is said that:

"The word 'railroad' as used here may mean railroad company, as it usually does. Ordinarily, this general description would be controlled by the subsequent enumeration contained in the words, 'All depots, warehouses and structures.' \* \* \* But when this rule of construction is relied on, it will be generally found that the particulars are introduced with a *videlicet* or some such manifestation of the intention to restrain the general description. (*Bouv. Dict.* words '*videlicet*,' '*scilicet*.') And the *ejusdem generis* rule of construction always yields to the intention to be gathered from the context and general scope of the whole instrument. \* \* \* Here the particulars are introduced by the word 'including,' which does not indicate a restrictive intention, but the contrary."

A good illustration of the rule is afforded by the Interstate Commerce Act which, as it existed prior to the amendment of 1906, by its terms applied only to railroad companies, but was then amended by the insertion of a provision that the word common carrier as used in that act should "include express companies and sleeping car companies." There, from the circumstances attending its insertion and the context of the act, the intention of the Congress was plain to merely extend the jurisdiction of the Interstate Commerce Commission over the two classes of carriers specified.

Assuming, therefore, as I think is proper, that the usual meaning of the word "includes" as given above is correct, it then remains to carefully scrutinize the act to see to what extent, if at all, such a meaning is inconsistent with, or limited by, its other provisions, or whether from the entire context the inference can fairly and reasonably be drawn that the Legislature intended to place such classes of common carriers as ferries within the jurisdiction of the Commissions.

An analysis of the definition in section 2 shows that of the seven classes of carriers referred to, one comprises express companies and the other six distinctly railroad agencies, all of which are probably the best known examples of common carriers, and whose character as such is unquestioned. The question immediately occurs, what is the purpose of specifying these well recognized carriers, if not one of enumeration of carriers subject to the provisions of the act. If the definition had contained some carriers whose character as such would otherwise be open to doubt, or contained but a short and incomplete list, it would indicate that all well recognized common carriers were embraced therein plus the doubtful ones; but here there are no doubtful ones and the list is full and complete in reference to the great class of carriers to cover which the legislation was desired. If, however, we give the word "include" its broader meaning, it would be equivalent to construing the definition to mean that the word common carrier, as used in the act, shall include common carriers, a definition that does not define and a construction that would violate the rule that effect is to be given so far as is possible to all parts of the act. We must assume that the Legislature understood the

meaning of the words it used, and, to my mind, when it followed a broad term with but a small number of well recognized parts, it narrowed instead of extended the broad term. This definition differs from that of railroads, to which I have referred for purposes of illustration, in that a railroad as generally understood is a unit made up of many component and inseparable parts, while the term "common carrier" is a comprehensive one embracing a large number of separate and distinct units. While this reasoning may not be absolutely controlling on this question, it throws a heavier burden on the context of the act to evidence an intention to include carriers other than those specified in the definition.

Turning to the act, we find that it is divided into five articles, of which Article I contains definitions and general provisions regarding the organization and procedure of the Commissions; Article II, provisions relating to the duties of railroads, street railroads and common carriers; Article III, provisions relating to the powers of the Commissions over common carriers, railroads and street railroads; Article IV, provisions relating to gas and electric corporations, and Article V, provisions abolishing other boards and devolving their powers upon the Commissions. Of these the only ones affecting this question, outside of the definitions quoted above, are Articles II and III. As ferries were not subject to the jurisdiction of the Board of Railroad Commissioners, the Commissions can not acquire jurisdiction through their succession to the powers of that board. (See Transportation Corporation Law, sections 2-6, inclusive.)

Articles II and III, for the purposes of considering this question, may be subdivided as follows:

<b>ARTICLE II.</b> (Duties of Common Carriers.)	1. Application of article, § 25. 2. Adequacy of service, §§ 26, 27. 3. Rates, §§ 28-34, inclusive; § 36. 4. Discrimination, §§ 35, 37, 39. 5. Liability, §§ 38, 40.
<b>ARTICLE III.</b> (Powers of Commissions.)	a. General powers of commissions, § 45. b. Reports of common carriers, § 46. c. Investigations, §§ 47, 48. d. Power to fix rates, order changes, etc., §§ 49, 50, 51. e. Uniform system of accounts, § 52. f. Franchises, stock and bond issues, §§ 53, 54, 55. g. Penalties and proceedings, §§ 56, 57, 58, 59. h. Interstate traffic, § 60.

## ARTICLE II.

### (1) Application of Article.

Section 25 should be read in connection with the short title of the act in section 1, which provides:

"This chapter shall be known as the public service commissions law, and shall apply to the public services herein described, and to the Commissions hereby created."

It is plain, I think, that the word "services" refers to the act of service rendered and not to the agency rendering it, but should there be any doubt on this point, it is made clear by a reference to section 25, which is as follows:

"The provisions of this article shall apply to the transportation of passengers, freight or property from one point to another within the State of New York and to any common carrier performing such service."

These sections are both jurisdictional and are of the utmost importance in considering this question, for it will be noted that by section 1 the act is to apply to the public services described in it, and section 25 describes those services in language sweeping enough to embrace all carriers and unless this wide jurisdiction, unlimited as to kind or class of common carrier, is controlled by the definition in section 2, I think the Commissions' power to regulate all such agencies would not be open to serious dispute. These sections afford substantial basis for the argument that the intention, as drawn from the act, was to grant in general terms jurisdiction over *all* common carriers and that the provisions for details of regulation do not affect such jurisdiction, but merely make clearer the powers of the Commissions over certain carriers. But if this be so, what is the function of the definition in section 2? It must be assumed that it was inserted for some purpose and our inquiry comes back again to a consideration of how far, if at all, the sweeping jurisdiction granted by these sections is limited by the word "includes" in the definition, as itself affected by the context of the act.

### (2) Adequate Service.

Section 26 is just as broad and requires that common carriers

"shall furnish \* \* \* such service and facilities as shall be safe and adequate and in all respects just and reasonable" and that "all charges \* \* \* shall be just and reasonable and not more than allowed by law or by order of the Commission."

But it will be noted, as evidencing the intention, that when the Legislature came to providing for a detail of such adequate service, it concerned itself only with railroads, as section 27 provides that

"a railroad corporation upon \* \* \* application \* \* \* shall construct \* \* \* switch connections \* \* \* with a lateral line of railroad or private side-tracks \* \* \*."

This limitation of detail is further found in subdivision d of Article III, which will be referred to in its order.

### (3) Rates.

Here is an instance of where the language intended to cover other carriers is so colored by the prominence of the necessity for railroad regulation as to seem restricted to it. The word common carrier is used, but provision for details is almost exclusively applicable to railroads; although, by the definition of common carrier referred to above, express companies must be affected as well.

Section 28 requires that

"every common carrier shall file \* \* \* schedules showing the rates \* \* \* for the transportation of persons and property within the State between each point upon its route and all other points thereon; and between each point upon its route and upon all points upon every route leased, operated or controlled by it and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier whenever a *through route and joint rate* shall have been established or ordered between any two such points \* \* \*."

Strictly speaking, there are no routes "leased, operated or controlled" by a ferry company, or, for that matter, by an express company, and the words "through route and joint rate" are more usual as applied to railroads, but between an express company and a ferry company there is this important distinction—that these provisions apply to express companies, unsuited though the language may be for the purpose, because they are expressly made subject to the act, while in the case of ferry companies, if they be so subject, they are made so by construction. Though these words in section 28 have a truer application to railroads, they might include ferry companies in the absence of other inconsistent provisions in other parts of the act, but this is to be noted as one of the indications of intention and taken into consideration with all other provisions, one way or the other, in summing up the evidence of legislative intention.

Sections 29, providing for changes in schedules "filed and published by a common carrier:"

#### 30. Paragraph 1, that

"The names of the several carriers which are parties to any joint tariff shall be specified therein and" (the carriers) \* \* \* "shall file with the Commission such evidence of concurrence \* \* \* as may be required \* \* \*."

#### —. Paragraph 2, that

"Every common carrier shall file \* \* \* sworn copies of every contract \* \* \* with any other common carrier \* \* \*."

#### 31, that

"No common carrier shall \* \* \* by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person \* \* \* a greater or less compensation for any service \* \* \* in the transportation of passengers, freight or property \* \* \* than it charges, demands, collects or receives from any other person \* \* \* for doing a like and contemporaneous service \* \* \*."

#### 32, that

"No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic \* \* \*."

#### —, and that portion of 33 providing that

"No common carrier \* \* \* shall after the first day of November, 1907, engage or participate in the transportation of passengers, freight or property \* \* \* until its schedule shall have been filed."

#### — and that

"No common carrier \* \* \* shall directly or indirectly issue or give any free ticket, free pass or free transportation for passengers or property \* \* \*."

are all comprehensive enough to cover ferry and navigation companies. Section 32 then goes on to provide that the prohibition against giving free transportation shall not apply to

"employees of \* \* \* telegraph and telephone companies doing business along the line of the issuing carrier."

## 80 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

which is necessarily restricted to railroad companies, as is the second paragraph of section 33, permitting the issuance of mileage tickets, for, although it is entirely feasible for navigation companies to issue these tickets, such is not the practice.

The language of the remaining sections of this subdivision, providing (section 34) that

"No common carrier \* \* \* shall \* \* \* suffer \* \* \* any person \* \* \* to obtain transportation \* \* \* at less than the rates then established \* \* \* by means of false billing, false classification, false weight or weighing or false report of weight or by any other device or means."

and section 36, that

"No common carrier subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transportation of passengers or of a like kind of property under substantially similar circumstances and conditions for a shorter and for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any such common carrier to charge and receive as great a compensation for a shorter as for a longer distance or haul."

would perhaps be applicable to ferry companies, although the entire language, and especially the word "haul" in the last line of section 36 has a truer application to railroads.

### (4) Discrimination.

In this subdivision begins to appear a stricter limitation of detail to railroads. Section 35 provides:

"Every common carrier is required to afford reasonable, proper and equal facilities for the interchange of passenger, freight and property traffic between the lines owned \* \* \* by it and the lines of every other common carrier."

The word "lines" as usually understood might apply to lines of steamboats or ferries, but further on in this section it is provided that

"It shall not be construed to require a common carrier to permit or allow any other common carrier to use its tracks or terminal facilities. Every common carrier as such is required to receive from every other common carrier, at a connecting point, freight cars of proper standard, and haul the same through to destination \* \* \*."

A navigation company could clearly not comply with this detail, for the act uses the word tracks and requires the carrier to haul the freight cars through to destination and although there might be ferries that could be used as railroad connections, the language is not natural to such a case, and in addition, ferries of that character would be owned by a railroad company and embraced in the definition of a railroad referred to above. This limitation is even more pronounced in section 37, requiring that

"Every railroad corporation or other common carrier engaged in the transportation of freight shall \* \* \* furnish to all persons sufficient and suitable cars for the transportation of such freight in carload lots."

which is manifestly inapplicable to carriers other than railroads.

Section 39 providing that

"No common carrier shall enter into \* \* \* any combination \* \* \* to prevent the carriage of freight and property from being continuous \* \* \*"

although drawn expressly to cover railroad companies might apply as well to navigation or freight companies, but not the further provision that

"No breakage of bulk, stoppage or interruption of carriage, made by any common carrier, shall prevent the carriage of freight and property from being treated as one continuous carriage."

### (5) Liability.

Section 38 requires

"Every common carrier and every railroad corporation and street railroad corporation to issue either a receipt or bill of lading \* \* \*" and provides for liability thereunder. There is nothing in this section which could not be operative as against ferry companies nor is there in section 40, which provides for a recovery of damages arising from a violation of any provisions of the act, if, indeed, ferry companies are subject to such provisions.

## ARTICLE III.

### (a) General Powers of Commissions.

### (b) Reports of Common Carriers.

Section 45. The first paragraph deals with the powers of the Commissioners to administer oaths and summon witnesses and does not affect the question.

Paragraph 2 provides that

"Each Commission shall have the general supervision of all common carriers, railroads, street railroads, railroad corporations and street railroad corporations within its jurisdiction, as hereinbefore defined, and shall have power to examine the same and keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines owned, leased, controlled and operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders by the Commission and charter requirements."

The words "lines owned, leased, controlled or operated" are inartificial as applied to ferries which have routes but not lines which could be owned, leased, controlled or operated in the usual sense of those terms.

Paragraphs 2 and 3, authorizing the Commission to examine all books and papers, and providing for hearings by the Commission relating to proposed changes in the law relating to any common carrier, railroad corporation or street railroad corporation, are comprehensive enough to cover all classes of carriers, as is also section 46, providing for the making of reports by common carriers, railroad and street railroad corporations.

#### (c) Investigations.

Section 47 provides that

"Each commission shall investigate the cause of all accidents on any railroad or street railroad within its district. \* \* \* Every common carrier, railroad corporation and street railroad corporation is hereby required to give immediate notice to the Commission of every accident happening upon any line of railroad or street railroad owned, operated, controlled or leased by it."

This is probably as clear an illustration as appears in the act of the limitation of details to railroads. It might, of course, be argued that the general provisions cover all carriers and that this detail is only intended to make more clear its application to one class of carriers, and if the word ferries had occurred in the definition this would probably be so; but here we are endeavoring to ascertain intent and it would seem only reasonable to suppose that if the Legislature had ferries in mind, it would have drawn a section like this one to cover them, for accidents to ferry and steamboats are usually more serious and fraught with even a larger loss of life than in the case of railroads. Paragraph 1 of the concluding section (48) of this subdivision, providing that

"Each commission may \* \* \* investigate \* \* \* any act or thing done or omitted to be done by any common carrier, railroad corporation or street railroad corporation subject to its supervision" and that "The commission must make such inquiry in regard to any act or thing done or omitted to be done by any such common carrier, railroad corporation or street railroad corporation in violation of any provision of law and in violation of any order of the commission."

is broad enough to cover any common carrier, as is also paragraphs 2 and 3 providing for the procedure to be followed on the filing of a complaint and authorizing the Commission, after investigation, to make the necessary orders.

#### (d) Power to fix rates, order changes, etc.

Section 49 provides:

"Whenever either commission shall be of the opinion after a hearing upon a complaint made, as provided in this act, that the rates, fares or charges collected by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction \* \* \* are unjust \* \* \* or in any wise in violation of any provision of law, the Commission shall determine the just and reasonable rates \* \* \* and shall fix the same by order to be served upon all common carriers, railroad corporations or street railroad corporations by whom such rates, fares and charges are thereafter to be observed."

This is broad enough and so is the further provision authorizing the Commission to require any common carrier, railroad corporation or street railroad corporation to accord adequate facilities, but the section then goes on to provide that

"The Commission shall have power by order to require every two or more common carriers or railroad corporations whose lines owned, operated, controlled or leased, form a continuous line of transportation or could be made to do so by the construction and maintenance of switch connection to establish a through route and joint rate."

Although this language of this last part of the section might cover the case of traffic connection between a railroad and a ferry or steamboat, the presumption is against it and also against such a construction of section 50, which authorizes the Commission to require

"repairs or improvements to or changes in any tracks, switches, terminals or terminal facilities, motive power or any other property or device used by any common carrier, railroad corporation or street railroad corporation."

## 82 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Section 51 provides that

"If in the judgment of the Commission having jurisdiction any railroad corporation or street railroad corporation does not run trains enough or cars enough or possess or operate motive power enough reasonably to accommodate the traffic, passenger and freight transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency \* \* \* the Commission shall have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars, etc."

This section is most significant, for here the Legislature is itself dealing with transportation appliances used by the carriers subject to the act, and it is hardly open to doubt that if the Legislature had the regulation of ferries in mind it would have applied such an important provision to them by some reference to boats, etc., and not left it exclusively applicable to railroads.

### (e) Uniform system of accounts.

The portion of section 52 which authorizes the Commission to

"establish a uniform system of accounts to be used by railroads and street railroad corporations and other common carriers \* \* \* and prescribe the form of accounts, records and memoranda of the movement of traffic, as well as receipts and expenditures of money."

would apply to all common carriers, but not the latter part of the section, which provides that

"The Commission shall at all times have access to all accounts, records and memoranda kept by railroad and street railroad corporations and may prescribe the accounts in which particular outlays and receipts shall be entered \* \* \*."

So that it would seem that the Commission may establish a uniform system of accounts for all carriers, but can only examine the books of railroads.

### (f) Franchise, stock and bond issues.

Section 55 providing that

"Without first having obtained the permission and approval of the proper commission no railroad corporation, street railroad corporation or common carrier shall begin the construction of a railroad or street railroad or any extension thereof \* \* \*."

is restricted exclusively to railroad corporations, and the same is true of the first paragraph of section 55, which provides that

"No franchise \* \* \* to own or operate a railroad or street railroad shall be assigned, transferred or leased \* \* \* unless \* \* \* approved by the proper commission \* \* \*."

"No franchise \* \* \* to own or operate a railroad or street railroad shall The second paragraph provides that

hereafter purchase \* \* \* any part of the capital stock of any railroad corporation or street railroad corporation or other common carrier \* \* \* unless authorized to do so by the Commission \* \* \* and that \* \* \* no stock corporation \* \* \* shall purchase \* \* \* more than ten per centum of the total capital stock issued by any railroad corporation or street railroad corporation or any other common carrier \* \* \*."

This prohibition against acquiring any of the stock of a common carrier seemingly applies only to railroad companies, except in the case of stock corporations acquiring more than ten per cent. of the stock of a common carrier.

The concluding section of this subdivision is broad enough to cover all carriers and provides that

Section 55. "A common carrier, railroad corporation or street railroad corporation may issue \* \* \* evidence of indebtedness payable at periods of more than twelve months \* \* \* when necessary for the acquisition of property \* \* \* provided, and not otherwise, that there shall have been secured from the proper commission an order authorizing such issue \* \* \*. Such common carrier, railroad corporation or street railroad corporation may issue notes \* \* \* payable at periods of not more than twelve months without such consent \* \* \*."

### (g) Penalties and Proceedings.

These provisions are broad enough to cover all carriers, if they come within the other provisions of the act, and do not require extended quotation or discussion.

### (h) Interstate Traffic.

This is applicable to railroads alone, since the Commission is only authorized to "investigate freight rates on interstate traffic on railroads within the State."

## SUMMARY AND CONCLUSION.

The analysis of the act in the foregoing pages shows that the plan upon which the act was drawn contemplated very broad sections in providing for the general powers of the Commissions, and then other sections, also broadly drawn, providing for details of transportation. Broad as these provisions are, it will be noted that nowhere in the act is there any language having a special application to ferry companies. Taking up the most important subjects with which the act deals, we find that under adequacy of service, so far as details are concerned, the duty placed upon a carrier is in certain cases to provide switches, and the Commissions are empowered to require connections between carriers by switches; to require repairs or improvements in tracks, switches, terminal facilities and motive power, and to require railroad corporations to run more trains or cars. In the almost equally important matter of rates, although more general in its scope, the language is more applicable to railroads, especially the details such as those in regard to mileage tickets and joint rates. In regard to discrimination connecting carriers are required to receive "freight cars" and "haul" the same; carriers are required to provide sufficient "cars" for "freight in car-load lots" and the provision for "continuous carriage" and "breakage in bulk" relate to evils common to railroads. In the matter of investigations, the authority of the Commissions is generally unrestricted, but in the provision for the investigation of accidents the only accidents provided for are those happening on railroads. In the provision for uniform system of accounts, although the Commission is empowered to establish a uniform system of accounts for common carriers, its right of access to accounts is seemingly restricted to those of railroads, and finally in the matter of approval of franchises and stock and bond issues the only franchise needing approval is one to build a railroad or an extension thereof. The approval of the Commission is necessary only to the transfer of a railroad franchise and the prohibition against a corporation acquiring any stock in a common carrier corporation without the Commission's approval extends only to railroad corporations.

The inquiry is pertinent—if the necessity for the regulation of water transportation existed, why did the Legislature in all the important respects referred to confine its attention to railroads when a slight change of phraseology would have embraced these other classes of carriers?

An important and significant fact to consider as evidencing legislative intention is the treatment of the question of placing pipe line companies within the jurisdiction of the Commission. In the act as originally introduced, these companies were included in the definition of common carrier, but before the act reached final passage they were stricken therefrom. What other view can be tenable but that the Legislature considered that this act was limited in its effect to the carriers enumerated? To take any other view would be to place pipe line companies again within the purview of the act or to omit them for some illogical reason, while at the same time retaining such carriers as ferry and navigation companies.

Sections 1 and 25, to which I have already referred, at some length, do furnish a basis for the argument that the general provisions, such as section 25, empower the Commissions to regulate all common carriers, and that the provisions for detail are not intended to limit the broad jurisdiction, but are intended merely to make more clear its application to certain carriers; but the primary rule of construction is to ascertain the legislative intent, and I do not think that the act, taken as a whole, authorizes such a broad and sweeping construction, but on the contrary it seems to me that the Legislature, by its application of this legislation to the details referred to, clearly showed that the general language was to be restricted to the carriers specifically named in such definition. It is by this construction alone that we can reconcile the action of the Legislature in striking from the definition the words "pipe line companies."

Although the fact that the problem of railroad regulation was the most pressing, and, therefore, most prominent in the minds of the framers of the act, and that this prominence necessarily colored the language used throughout, whether intended to apply to railroads alone or to other common carriers, such as express companies as well, and although probably no one of the limitations of detail to railroads would of itself warrant the conclusion, yet it is my opinion that their totality, together with the form of the definition and the action of the Legislature in regard to pipe line companies and all other considerations to which I have referred, evidences the intention on the part of the Legislature to confine its action to the classes of carriers specifically named in the definition.

In construing this act it must be also borne in mind that legislation of this character marks a wide departure from American ideals of government upon which the theory of the Jeffersonian school, of as little government as possible, has had a wide and lasting effect, and that where this departure is made to meet the complexities of modern transportation and industrial conditions, the courts are bound to carefully examine the basis for the wide powers exercised by the Commissions, and where any enlargement of such powers is claimed, it must rest on a clear and stable basis.

The fact that carriers engaged in transportation on navigable waters come within the admiralty jurisdiction of the Federal Courts, and that provision for them might give rise to embarrassing complications, may or may not have influenced the Legislature in this regard.

In conclusion, this view is further borne out by a consideration of this question in its broader or political aspect. The problem of railroad regulation has since and even prior to the enactment of the first Interstate Commerce Act in the late eighties, been a matter of vital importance to the country at large and especially during the last six or eight years—has occupied probably the most prominent place in American politics; but at no time during the campaign to secure this legis-

## 84 PUBLIG SERVICE COMMISSION — FIRST DISTRICT.

lation, in which the entire subject of transportation was thoroughly discussed in all its bearings, has there been, to my knowledge, any agitation for the regulation of water transportation; nor is it covered by the Interstate Commerce Act, upon which the Public Service Commissions Law is so largely modeled, save where those agencies are operated in conjunction with railroads. In this State, during the gubernatorial campaign preceding the enactment of this legislation, in which the discussion of these questions was widespread, there were no abuses in the management of ferry or navigation companies brought to light and there was no public demand for legislation affecting them, nor was there any reference to them in the Governor's message, pursuant to the recommendation of which this law was passed. Regulation for railroads and all carriers connected with them in any way, and of gas and electric corporations, was demanded and was granted, but there was no such demand in the case of ferry companies, and in the public mind the necessity for their regulation did not exist.

I, therefore, beg to report that in my opinion the Commission is without jurisdiction over ferries, and has, therefore, no power to act upon the complaint referred to.

Very truly yours,  
(Signed) LE ROY T. HARKNESS,  
Assistant Counsel.

### Jurisdiction — Commission for the First District — Ferries Included in Railroad — Public Service Commissions Law, Section 2.

OPINION OF COUNSEL.

October 11, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I have your letter of the 10th inst., transmitting a copy of a letter from Richard L. Leo, dated the 8th inst., complaining of the ferry service maintained by the Long Island Railroad between Thirty-fourth street, in this borough, and Long Island City.

Without reference to the general question of jurisdiction of ferries disassociated with railroad companies, I desire to advise you that in my opinion the Commission has jurisdiction over the case presented by virtue of section 2 of the Public Service Commissions Law, which provides in part that "the term 'railroad' includes every railroad \* \* \*, with all ferries \* \* \* used, operated, controlled or owned by or in connection with any such railroad."

Yours very truly,  
(Signed) ABEL E. BLACKMAR,  
Counsel to the Commission.

### Jurisdiction Over Common Carriers — "Doing Business Exclusively" — Filing Schedules — Public Service Commissions Law, Sections 2, 5.

OPINION OF COUNSEL.

October 25, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I have your letter of the 19th inst., transmitting a communication from the New York and New Jersey Steamship Company of the 18th inst., inquiring whether they are required to file freight schedules under the Public Service Commissions Act.

The company, as a freight company, is, as respects its business transactions within this State, within the definition of the term "common carrier" in section 2 of the act; but the company in this case raises the question whether, since all its business is not transacted within the First District, it comes within the jurisdiction of the Commission for that district.

Section 5 provides that the jurisdiction of the Commission for the first district shall extend (paragraph IV) "to any common carrier operating or doing business exclusively within that district."

The language of this paragraph is ambiguous and immediately gives rise to the question whether, in order to come within the jurisdiction of this Commission, *all* the carrier's business must be transacted in this district or whether the jurisdiction of the Commission attaches to that portion of the business of the company which is transacted exclusively within the district.

I favor the latter view, although there is considerable force in the argument that according to strict rules of grammatical construction the jurisdiction of this Commission only attaches to a company which does all its business here.

The primary object is, of course, to ascertain the intention of the Legislature and the scheme of the act is to place all matters arising within the first district within the jurisdiction of the Commission for that district and all the matters arising in the second district within the jurisdiction of the Commission for that district.

Such companies are, of course, within the jurisdiction of one of the Commissions and it is difficult, keeping in mind the scheme of the act, to understand what reason there would be for placing under the jurisdiction of the Commission for the second district business which is entirely consummated within this district.

In common parlance the words "doing business exclusively" are usually understood as referring to the business transacted and I think the Legislature in adding to the words "operating \* \* \* exclusively" the words "doing business exclusively" intended that the Commission for this district should have jurisdiction not only over those companies which transact their entire business here, but also the business of other companies which is exclusively within this district.

As a practical matter I think it would be well for the Commission to require reports from these companies, basing its action upon the construction which I have given this paragraph. This same reasoning applies to the cases of express companies about which I have conferred with Commissioner Eustis, and in which case it was decided that we should require them to file the schedules called for by the act.

Yours very truly,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Commission May Rescind Resolution Adopting Rapid Transit Route Passed by Board of Rapid Transit Railroad Commissioners — Methods of Constructing Subways — Rapid Transit Act, as Amended by Elsberg Law.

### OPINION OF COUNSEL.

September 18, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I am in receipt of your communication dated yesterday, in which you ask for opinions on the following questions:

(1) Whether the Brooklyn Rapid Transit Company has any franchise rights in New Utrecht avenue in Brooklyn, and the nature and extent of such rights.

(2) Whether the Rapid Transit Company Act requires the Public Service Commission to proceed to make contracts for the construction of the Fourth avenue subway.

I have referred the first of these questions to one of my assistants for investigation and will report the result of such inquiry later.

I answer the second of said questions as follows:

Section 34 of the Rapid Transit Act contains the following provision:

"The Board of Rapid Transit Railroad Commissioners for any city shall, prior to the time of the final grant of any franchise under the provisions of this act or the making of a contract for construction of any railroad under the provisions of this act, have power to rescind and revoke any resolution or resolutions of such board adopting any routes or general plan for the rapid transit railroad adopted by such board and, in the discretion of the board, in lieu thereof, to adopt new routes and general plans."

It necessarily follows from this that your board is not under any legal compulsion to construct the Fourth avenue subway, but has power to rescind the resolution establishing such route, and so put an end to the whole project.

The question, however, might arise, whether your board is limited in its action to one of two alternatives — to proceed immediately with the construction of the said subway, or to rescind the resolution establishing the route. The decision of this question requires a further examination of the law.

At the time when your board came in power, the Board of Rapid Transit Railroad Commissioners had adopted routes and a general plan for a number of subway lines in the city of New York including routes known as:

- (1) The Seventh and Eighth avenue route.
- (2) The Lexington avenue route.
- (3) The Third avenue route.
- (4) The Jerome avenue route.
- (5) The Fourth avenue and Bensonhurst route.
- (6) The (so-called) Tri-Borough route.
- (7) The West Farms and White Plains route.

The routes, together with others, had been adopted by the Board of Rapid Transit Railroad Commissioners, approved by the Board of Estimate and Apportionment and the consents of the abutting property owners or of the Appellate Division in lieu thereof had been obtained. The estimated cost of the routes above specified is between 150 and 200 million dollars.

Under the Rapid Transit Act, as amended by the Elsberg Law, the city might proceed with these subways in any of the four following ways:

*First.* By a contract for construction, maintenance and operation, with the same person.

*Second.* By a contract or contracts for construction, with separate contracts for equipment and operation.

*Third.* By a contract or contracts for construction and equipment and a separate contract for operation.

*Fourth.* By a contract or contracts for construction and equipment followed by municipal operation.

It is the province of the Board of Estimate and Apportionment to decide which of these courses shall be pursued.

On the 7th of December, 1906, the Board of Estimate and Apportionment adopted a resolution, recommending to the Board of Rapid Transit Railroad Commissioners that alternate bids be invited, first, for construction alone, and second, for construction, equipment and operation, for each of the routes hereinabove specified. Under this resolution, bids for three of the subways, viz., the Seventh and Eighth avenue, the Third avenue and the Jerome avenue, were invited; but no proposals were received.

On the 4th day of June, 1907, at the request of the Rapid Transit Railroad Commissioners, the Board of Estimate and Apportionment passed a resolution modifying the resolution hereinbefore referred to of December 7, 1906, as to the Fourth avenue and Bensonhurst route and the said Tri-Borough route, and, instead of the provisions of the resolution of December 7, 1906, the Board of Rapid Transit Railroad Commissioners was authorized to let contracts for construction only for the Manhattan Bridge route, part of route 9-C in Brooklyn, part of route 11-E-1 in Brooklyn, and routes 11-A, 11-B, 11-F (Bensonhurst route) in the borough of Brooklyn; said routes together forming a line from Chrystie street in the borough of Manhattan, across the Manhattan Bridge, and under Fourth avenue in the borough of Brooklyn.

The Rapid Transit Act contains the following provision:

"As soon as such consents, where necessary, shall have been obtained for any rapid transit railroad or railroads and the detailed plans and specifications have been prepared, as is provided in section 6 of this act, the said board, for and in behalf of the city, shall enter into a contract with any person, firm or corporation which, in the opinion of said board, shall be best qualified to fulfill and carry out said contract, for the construction of said road or roads," etc.

This provision must be read in connection with other clauses, viz.:

(Section 34.) "And the said board may in any case contract for the construction of the whole road or all the roads provided for by the aforesaid plans in a single contract, or may by separate contracts, executed from time to time, or at the same time, with one or more such persons, firms or corporations, provide for the construction of such road or roads," etc.

(Section 34-e.) "Nothing contained in this act shall be deemed, or be construed as intending, to limit, or as limiting, in any manner, the discretion of the board of rapid transit railroad commissioners, provided in the opinion of the board of estimate and apportionment, or other analogous local authority of such city it is expedient, practicable and in the public interest to do so, to enter into contracts for construction, equipment, maintenance and operation with the same person, firm or corporation, or for any one or more of said purposes with the same person, firm or corporation, or with different persons, firms or corporations, either in one contract or in separate contracts, and at any time or times." (New section, L. 1906, Ch. 472, § 6.)

These provisions impose on the board the general duty to proceed with construction of a system of rapid transit in the city. But there is no greater obligation to proceed with one route than with another. As to the time when bids shall be invited for any particular route, I believe that discretion rests with the Commission as successor to the power of the Board of Rapid Transit Railroad Commissioners.

This discretion in the Commission was recognized by the Appellate Division of the Supreme Court in the *Matter of the Board of Rapid Transit Railroad Commissioners, etc.*, 114 App. Div. 379. This was an application to approve nineteen different routes, the estimated cost of the construction and equipment of which aggregated \$450,000,000, whereas the city's borrowing capacity was only \$61,000,000. The court refused to tie up these routes permanently, and limited its approval to a period of two years, saying: "This will enable them (*i. e.* the Board) within the period named, in view of the then existing condition of the city's finances, to determine just what routes should be built; and after that time they should be required, if able to construct other routes, to renew their application to this Court."

I am of the opinion that the Commission is under no legal obligation to proceed at once to contract for the construction of the Fourth avenue subway; but has discretion as to the time when the contract shall be made, and also, as has been pointed out, has full power to rescind the resolution adopting this route.

Yours respectfully,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Modification of Subway Contracts—Consents Necessary— —Changes in Route—Rapid Transit Act, Sections 4, 5, 37, 38.

OPINION OF COUNSEL.

December 17, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I have been asked to advise the Commission whether a change can be made in the location of the subway structure of the Brooklyn and Manhat-

tan loop in Centre street by supplemental contract with the contractors and without securing the consent of the Board of Estimate and Apportionment and of the abutting property owners.

Under section 38 of the Rapid Transit Act, the Commission, as successor to the Board of Rapid Transit Railroad Commissioners, may, from time to time, with the consent of the bondsmen or sureties of the contractor, agree with the contractor upon changes in and modifications of the contract or the plans and specifications upon which the road is to be constructed. It is, however, provided therein that no change or modification in the plans and specifications consented to and authorized pursuant to section 5 of the act, shall be made without the further consent and authorization provided for in said section.

The consent and authorization last herein mentioned refers to the consent of the Board of Estimate and Apportionment and of the abutting property owners. Section 4 provides that the general plan shall show the mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue or other public place is to be encroached upon and the property abutting thereon affected. We have, therefore, to determine whether this proposed modification alters the extent to which the street is to be encroached upon and the abutting property thereon affected, as shown in the general plan of the route, as it was originally consented to by the municipal authorities and authorized by the Appellate Division.

The case of the Park avenue deviation has been several times before the court. The maps and drawings of route No. 1 were, by resolution of the Board of Rapid Transit Railroad Commissioners, passed on February 4th, incorporated in and made a part of the resolution showing the route and general plan. These drawings showed that the tunnel was to be located thirty-five feet easterly from the easterly side of Park avenue, and as they were a part of the resolution adopting the route and general plan, they determined the extent to which Park avenue could be legally encroached upon and the rights of abutting property owners legally affected. Subsequently, the location of the subway was changed without the consent of the municipal authorities or the abutting property owners, so that the easterly wall thereof was within seven feet of the easterly side of Park avenue. The court held that this deviation from the route was illegal. I have, therefore, examined the resolutions and the maps and plans establishing route No. 9, namely, the route through Centre street, to determine if they are so drawn as to restrict or limit the extent to which Centre street may be used for subway construction, either as against the city or as against the abutting property owners.

The general route through Centre street, as laid out by the Board of Rapid Transit Railroad Commissioners, locate the subway generally in Centre street. The plan of construction provides that there shall be four tracks in Centre street; that the tracks shall be placed in general under the center of the longitudinal streets, as far as practicable and convenient, but if required may be diverted to one side or the other of such longitudinal streets; that the roof of the tunnel shall be as near the surface as street conditions and grades will conveniently permit; that the tunnels above described shall in no case be less than thirteen feet in height in the clear; that there shall be a width in the tunnels not exceeding fifteen feet for each track in addition to the thickness of the supporting walls, except that at stations, switches, turnouts, curves and cross-overs the width may be increased; that stations and station approaches shall in general be at the intersection of streets and shall be built under or over the streets and immediately adjoining private abutting property, or through private property, or both under or over the streets and through private property; that wherever it shall be necessary for the proper maintenance of pipes or other subsurface structures, the width of the tunnel may be enlarged on either or both sides by an additional width on either side of the route not to exceed fifteen feet. These are the substantial limitations upon the right to use the street and to affect abutting property which I find in the general plan. Drawings were also annexed and presented to the Board of Estimate and Apportionment and the Appellate Division, but by resolution of the Board of Rapid Transit Railroad Commissioners it was expressly provided that they were adopted for convenience merely and not to be deemed a part of the description of the routes or a part of the general plans for any purpose whatever.

Up to this point this opinion has been devoted to the inquiry whether it is necessary to submit any modification of this contract to the Board of Estimate and Apportionment under the proviso contained in section 38, on the ground that such change involves a modification of the original route and general plan.

It still remains to consider whether the provisions of section 37 require that an amendatory contract should be submitted to the Board of Estimate and Apportionment. Such section provides for the application to the Board of Estimate and Apportionment to fix the amount of bonds to be sold for the purpose of furnishing money to carry out the contract. It further provides that the amount of bonds shall not exceed the limit prescribed by the Board of Estimate and Apportionment, and

"No contract for the construction of such road or roads shall be made unless and until such board of estimate and apportionment or such other local authority shall have consented thereto and prescribed a limit to the amount of bonds available for the purposes of this section, which shall be sufficient to meet the requirements of such contract in addition to all obligations theretofore incurred and to be satisfied from such bonds."

To determine whether this provision requires a submission of such modifying contract, it is necessary to trace the history of the law in this respect. Prior to

1904, the Rapid Transit Act provided that the total amount of bonds to be sold without the consent of the Legislature first having been obtained should not exceed fifty millions of dollars, with a possible increase of \$5,000,000 for the acquirement of necessary lands and easements. In that year, for the purpose of permitting other and additional rapid transit contracts to be made, this provision was repealed, and in the place thereof was enacted the provision hereinabove quoted.

In 1906, the Elsberg bill was passed, which referred the matter to the Board of Estimate and Apportionment, to decide whether the contract should be one for construction, equipment and operation, or for construction and equipment, or for construction only, and the provision already above quoted was continued in the law. At the time of the enactment of the Elsberg bill and as part of the same bill, section 38 was also amended by striking out the word "and" in such section and inserting the word "or" in its place, thus showing the legislative intent to continue section 38 in full operation.

The conclusion which I draw is, that the above quoted provisions of section 37 refer to contracts which require the appropriation of money and do not refer to a modification of the contract which does not increase the cost of the work of the subway. When the clause limiting the total amount of bonds which could be sold for rapid transit purposes was repealed, it was the apparent legislative intent to commit to the Board of Estimate and Apportionment the final determination of the amount of money to be used for rapid transit construction, and to that end it provided that contracts for construction should be presented to the Board of Estimate and Apportionment, so that such board might base upon such contracts their determination as to the amount of money to be expended.

I, therefore, am of the opinion that it is not necessary to present any modifying contract to the Board of Estimate and Apportionment and obtain their consent thereto, unless either such modifying contracts—first, contain a modification of the route and general plan originally consented to by the Board of Estimate and Apportionment and by the property owners or the Appellate Division, or second, require the expenditure of a larger sum of money.

I wish also to call your attention to the fact that it will be necessary to agree with a number of different contractors before this modification can be carried out, and any of them can, by refusing to consent, put a practical veto along the whole route. This proposed modification is not such as could be carried out by the mere direction of the engineer under the provisions of the contract.

Very truly yours,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Construction and Operation of Flatbush Avenue Subway Extension as an Extension of Contracts Nos. 1 and 2—Rapid Transit Act, Sections 32a, 38.

### OPINION OF COUNSEL.

December 23, 1907.

*Public Service Commission for the First District:*

DEAR SIRS.—I have the secretary's letter of the 12th inst., transmitting a copy of the following resolution:

"Resolved, That the counsel be requested to prepare an opinion on the method or methods whereby a contract for the construction and operation of an extension of the Fulton street, Brooklyn, subway, from Atlantic avenue station to Willink entrance, Prospect Park, can be made, and whether it can be built as an extension of Contracts Nos. 1 and 2, and operated for 35 years."

On examining this matter I find that this route extending from Atlantic avenue to Parkside avenue was considered by the Rapid Transit Board as an extension of Contract No. 2, being the contract for the construction of the Brooklyn-Manhattan route, and was, at the time of its adoption, greatly desired by the Interborough Rapid Transit Company as a complement to the subway already under construction by it. The route was adopted by the Rapid Transit Board on March 24, 1904 (Rapid Transit Minutes, Vol. 5, p. 2598), by the Board of Aldermen, which then had jurisdiction to pass on franchises on August 4, 1904, and by the Mayor on August 22, 1904. The consents of the abutting property owners were obtained, as certified to the board by its counsel on December 29, 1904 (Rapid Transit Minutes, Vol. 5, page 3061), and have been recorded and are now in the safe in the secretary's office.

The only remaining consent necessary was that of the Park Commissioner, which was refused because of the injury that would be caused by the subway construction to the trees alongside the park on Ocean avenue. After some discussion he agreed to give his consent if the subway at that point was moved about twelve feet, encroaching upon private property on the other side of the street, which was to be acquired by the city at an estimated expense of about \$300,000. No steps have been undertaken in that direction and the estimated cost would probably be greater today. As showing the route as laid out, I transmit herewith blue-prints of the two drawings adopted with the route and general plan by the Rapid Transit Board.

I understand that the Commission at present only contemplates the construction

of this route as far as the Willink entrance to Prospect park, but the consent of the Park Commissioner is still necessary, for, in my opinion, this route must be treated as a whole so far as consents are concerned, and the consents must all approve it as laid out and not a mere portion of it. In any event, the consent of the Park Commissioner is necessary for the part of the route from the Plaza to the Willink entrance.

The question whether this route could be built as an extension of Contract No. 2 is dependent upon a construction to be given section 38 of the Rapid Transit Act. This section in full is as follows:

"The Board of Rapid Transit Railroad Commissioners for and on behalf of the said city in which such road or roads may be constructed, may, from time to time, with the concurrence of six members of said board and the consent in writing, of the bondsmen or sureties of the person, firm or corporation which has contracted to construct, equip, maintain or operate said road or roads, or any of them, agree with the said contracting person, firm, or corporation upon the changes in and modifications of said contract, or of the plans and specifications upon which the said road or roads is or are to be constructed, but no change or modifications in the plans and specifications consented to and authorized pursuant to section 5 of this act shall be made without the further consent and authorization provided for in said section; but in no event shall the annual rental to be paid to said city for the use of said road, be reduced below the minimum rate hereinbefore provided."

I desire to draw especial attention to the fact that this section applies to "changes in and modifications of said contract or of the plans and specifications upon which said road or roads is or are to be constructed," and that nowhere is the express permission given for the construction of extensions as such under a modifying contract. The construction of this section in regard to extensions has twice engaged the attention of the counsel to the former Rapid Transit Board: once in the case of the Fort Lee extension, and again in the case of the Van Cortlandt park extension.

In the letter of counsel of 16th July, 1903, printed at page 2219, Vol. 4 of the Rapid Transit Minutes, it is said:

"In drafting the papers for the proposed spur to Fort Lee Ferry on 130th Street and the proposed connection with the Manhattan Elevated Railroad at 3rd and Westchester Avenue, we have had to consider whether these spurs are to be deemed to be technically complete new routes within the meaning of the provisions of Sections 34 and 38 of the Rapid Transit Act prescribing the form of contracts and the procedure in letting them, or whether on the other hand, these spurs were to be treated merely as incidents of the main line of the Rapid Transit Railroad now under construction. We are satisfied that the latter is the case. Each of these spurs is very short, costing a relatively small sum of money, perhaps \$100,000 or \$150,000, and of no value whatever except as an incident to the Manhattan-Bronx Rapid Transit Railroad. It would seem to be quite absurd that, for the construction of these spurs, the Board should go through the illusory form of competition involving delay and large expense and should require in each case a cash deposit of \$1,000,000 and a bond. The competition would be sheerly illusory, for the only value of the spurs is in making the Manhattan-Bronx Railroad more useful to the traveling public."

In concluding this opinion, however, the counsel thought it well to qualify it by adding to it as the last paragraph the following statement:

"It is proper for us to add that this, in our opinion, would not apply to any addition or extension long or important enough to be treated as a route in itself or as something more than a relatively unimportant incident to the main line of railroad already contracted for."

It is to be noted that one of the reasons which doubtless had considerable effect in the decision of this matter, namely, the requirement of a cash deposit of a million dollars and a bond on all contracts, is no longer present, the Rapid Transit Act having been amended in that regard.

In the second opinion, that in relation to the Van Cortlandt park extension, of 6th August, 1906, printed at page 4293, Vol. 7 of the Minutes, the scope of section 3 is somewhat extended, but the general reasoning of the Fort Lee ferry opinion is reaffirmed. In this opinion the counsel said:

"The Van Cortlandt Park extension is an elevated line of about 5,300 feet, or almost exactly one mile in length. If constructed it is intended to omit the part of the original line extending from Broadway to Bailey Avenue, about 600 feet long. The net addition to the original line will therefore be about 4,700 feet, less than nine-tenths of a mile of elevated railway. It is proposed by the Chief Engineer to construct three stations on the new extension, namely, at 231st Street, 238th Street and 242nd Street, the latter being located near the entrance to Van Cortlandt Park. The actual cost of this extension is estimated by the Chief Engineer at \$735,000, while the estimated cost of the part to be omitted from Broadway to Bailey Avenue is \$60,000, not including the cost of the terminal station which is replaced by that at Van Cortlandt Park entrance."

"It will thus be seen that the proposed line constitutes a net addition to the original route of about 4% in length and less than 2% in cost. It was so

designed as to be attached to and used with the original road. It obviously would be of no value as an independent line, for, as laid out by your Board and approved by the other constituted authorities, it could command no traffic if separated from the main stem."

Applying this reasoning to the proposed Prospect park extension, we find that the original contract price for Contract No. 2, extending from Park Row, in Manhattan, to Flatbush avenue in Brooklyn, was \$2,000,000 for construction, and an allowance of \$1,000,000 for the purchase of terminals, which will be somewhat increased by the four tracking of Fulton street, the cost of which is to be borne equally by the city and the contractor. Instead of an unimportant and relatively inexpensive addition, as in the case of the Fort Lee ferry and Van Cortlandt park extensions, we have here a road, considering it on the basis of its extension, merely to the Willink entrance to the park, about a mile and three-quarters in length, containing four tracks from Atlantic avenue to the Plaza, a large loop in the Plaza and two tracks from the Plaza to the Willink entrance, all of which, I am informed by Mr. Rice, will cost between three and one-half and four millions of dollars. I also wish to call the attention of the Commission to the difficulty, of which I am informed by Mr. Rice, in the matter of grades on this road, if it terminates at the Willink entrance. There is quite a hill beginning at the Willink entrance to the park and rising to the Plaza, and the stopping of this road at the Willink entrance would therefore present the problem of stopping and starting at the foot of a hill. On the basis of the route, as laid out, extending down to Parkside avenue, the length will be increased to about two and one-half miles, and the cost, due to the large eight track terminal yard on Ocean avenue, increased to between seven and eight millions of dollars.

In addition to the length and cost, it seems to me that it would be possible that even if this road could not be operated by itself, it could be operated in conjunction with the Fourth avenue route in Brooklyn by means of a short connection at Flatbush avenue and Fourth avenue, and might possibly be operated by the Brooklyn Rapid Transit System by connection with its open cut road at Malbone street and its elevated road at Atlantic avenue.

In my opinion, section 38 was never intended to permit such an important extension to be built under the guise of a modification of the contract, and it seems to me to have more in view a modification, such as that involving the construction of additional tracks at 98th street in the present subway. There is an additional reason for this conclusion in the further consideration that since the execution of Contract No. 2 containing a leasing provision for thirty-five years, the Legislature has amended the Rapid Transit Act in this regard by prohibiting leases for longer than twenty years. We must accept this until changed as the policy of the State, and for that reason it would be improper, by treating this important section as an extension, to place it under the thirty-five year leasing provision of Contract No. 2, whereas by a new contract made in accordance with the law as it now stands it would be impossible to make a lease for more than twenty years, effecting a practical evasion of the provisions inserted in the Rapid Transit Act by the Elsberg bill of 1906.

There are two methods under which this section can be built. It can be built (1) under section 32a of the act at the expense of the company, or (2) under the system of municipal construction.

Section 32a permits the building of extensions of existing roads wholly at the expense of the railroad company at a rental to be fixed by the Commission to be operated by the company for a period not longer than twenty-five years and for renewals not exceeding twenty years in the aggregate, and it is further provided that

"upon such termination of such franchise, right or authority, the plant and structure together with the appurtenances thereto of the grantee constructed pursuant to such certificate except rolling stock and other movable equipment, shall become the property of the city without further or other compensation to the grantee."

It is doubtful whether the Rapid Transit Subway Construction Company, as the contractor under Contract No. 2, would care to avail itself of the provisions of this section, but such a method is at the disposal of the Commission.

There remains the final method of construction at municipal expense under which the Commission can, subject to the consent of the Board of Estimate and Apportionment, make a contract for construction, construction and equipment or for construction, equipment and operation, but under the present provisions of the act the term of such operation cannot be longer than twenty years. If the money for construction were available, it might be that the Commission could construct the subway at the same time it is constructing the Fourth avenue route, and when completed it could be used either in connection with Contract No. 2 or with the Fourth avenue route, thus securing a measure of competition under which to negotiate with the Rapid Transit Subway Construction Company, or it may be that the Rapid Transit Subway Construction Company would be willing to take this under a contract for construction, equipment and operation for a twenty-year term, trusting to secure a further extension on the expiration of such term.

It seems to me that the Commission might well consider carefully the advisability of recommending an amendment of the law to permit under proper safeguards the extension of an existing route under the terms of the existing contract.

I am also in receipt of Commissioner Bassett's letter of the 12th inst., advising me that the Commission wished this department to proceed with the completion of

the consents for this extension. As I have shown above, the only remaining consent necessary is that of the Park Commissioner, and I would be glad if the Commission would advise me whether it wishes me to take the matter up with him.

Yours very truly,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Contract for Subway Construction — Bridging Excavation in Street in Front of Nos. 605-607 Fulton Street, Under Requirement by Commission, Must be Considered Extra Work.

### OPINION OF COUNSEL.

August 23, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I am in receipt of your two letters of August 16 and 20, transmitting letters of the Realty Associates, bearing date respectively August 12 and 19, asking that for their use in taking down the front part of their building at No. 605 Fulton street, under a contract which they have with the city to take down the same, in preparation for the city's extension of Flatbush avenue, the subway contractor, under the Brooklyn-Manhattan contract in Fulton street, be required by the Commission to plank over his excavation in front of their building, and also asking the Commission's permission to bridge the subway excavation at that point for the same purpose. They also state that the decking over the bridging is necessary because they cannot take their material out and in except at the front. With this letter you transmit a report of Mr. Norton, Assistant Secretary, which indicates that he has looked into the matter and considers that the request of the Realty Associates may possibly be reasonable, but says that the expense of the work demanded may, if required, be extra work to be paid for under the contract, and added to the cost of the subway upon which rental is computed.

You ask my opinion as to the powers of the Commission in this matter.

I find that by the terms of the Brooklyn-Manhattan contract under which this work is being done, the city assured to the contractor the right to construct, according to the contract, free from the claim or interference of abutting property owners. The contract provides that between the Borough Hall and Flatbush avenue before construction is begun the contractor shall furnish to the engineer and receive his approval thereto, a plan indicating his method of procedure. This plan was duly submitted and approved by the late Chief Engineer, Mr. Parsons, as I am informed by our engineer, and it did not provide for covering the excavation at this point or for the support of any roadway sufficient to hold up trucks and traffic in building materials of this description. At this point the elevated railroad pillars have to be supported, and the plan above mentioned, which has been approved, has been worked out in careful detail.

My opinion is that any requirement now by the Commission that the contractor cover or bridge the subway excavation at this point for the purposes of the Realty Associates will be extra work necessary to be paid for as such under the terms of the contract, and that the contractor is not bound under the contract to vary the plan of construction which has been properly approved, in order to give access to the property of the Realty Associates, for the purposes they mention. It is, however, within the power, no doubt, of the Commission, to require the work to be done under the direction of the chief engineer as extra work, if it sees fit to do so.

I have been aided in this matter by a report of the chief engineer furnished to me at my request, as to the situation at this point. The same is herewith submitted to you, and it appears from that report that there is reason to think that the facts have not been fully set forth to the Commission by the Realty Associates, and that the direction to the contractor which they ask for is not really necessary.

In regard to their request for permission to bridge over the sidewalk in their letter of August 19, which they say was stopped by the contractor, who required that they should first give a guaranty against injury or damage resulting from their work, it appears that the request of the contractor was that they should state in writing that they would be responsible for the safety of their own work, and that they should not place any load upon the timber work of the subway. They refused to write such a letter, stating that they had given a bond to the city, and that that was the only obligation that they would assume.

I think that such a bond to the city does not sufficiently indemnify the contractor in the prosecution of the work which has been committed to him by the city, in the construction of the subway in Fulton street, and that unless the Commission is disposed to require the extra work necessary to be done by the contractor for the covering of his excavations and making the same sufficient to support the additional weight required, it should not authorize the Realty Associates to construct or maintain a bridge or covering of the character requested.

Very truly yours,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Ducts for Cables Used to Convey Electricity for Manhattan-Bronx Subway Are Part of Construction, Not of Equipment, Though Built Apart From Subway Wall.

### OPINION OF COUNSEL.

NEW YORK, October 2, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I return herewith letter of Mr. Rice, chief engineer, of August 28th, transmitted to me with your letter of September 4th. Mr. Rice asks for advice as to whether the ducts not forming part of the walls of the subway are to be treated as part of the construction or as part of the equipment under Contract No. 1.

When the contract for the construction and operation of the Manhattan-Bronx subway was made, the motive power to be used therein had not been determined, and was left open for further consideration, until late in 1901, when it was decided to use electricity and that the cables used for conveying it should be carried through ducts, the main part of which were built as part of the subway wall, the subway being widened about eight inches to provide for these conduits. At some parts of the road, however, it was impracticable to build these ducts in the side walls, and they were in some places built over the roof of the subway and in others, as in the Park Avenue tunnels, under the floors of the subway, all forming a continuous system.

The question whether ducts should be charged against construction has already been litigated, and was carried to the Court of Appeals (175 N. Y. 470), which decided, on the opinion of Judge Hatch below (80 App. Div. 210), that such work constituted construction and not equipment.

The argument in the Appellate Division was based largely on the question of the character of the ducts which were built as part of the subway wall, and the court confined itself almost entirely to the consideration of those ducts and did not consider the character of the ducts about which Mr. Rice now asks advice. I think, however, that they are also covered by this decision, for the Corporation Counsel conceded on the argument that the entire duct system was one thing or the other, either construction or equipment. I understand from Mr. Rice that these ducts are constructed in almost as permanent a fashion as those in the walls and can only be removed by doing considerable damage to the subway structure. It would manifestly be the cause of great difficulty if, on the termination of the lease, part of the duct system should be treated as construction and part as equipment, to be removed by the subway company or paid for by the city. These ducts form a complete system, and are all of a permanent character. They all, in my opinion, form part of the construction and should be charged against that account.

The claim that part of this system constitutes equipment would, moreover seriously prejudice the action instituted by the Rapid Transit Board to restrain the Interborough Rapid Transit Company from selling the surplus electricity conveyed by means of cables through these ducts, on the ground that as they belong to the city, the company is not at liberty to use them for purposes other than for subway purposes.

Yours very truly,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

The contract also contains a covenant which is in part as follows (page 159):

"It is the intent of this agreement that in addition to indemnifying the city against all claims for damages, the contractor shall also be liable to the owners of adjacent or abutting property or of buildings or structures thereon, and to all tenants of or persons in such buildings or structures, for all physical injuries to property or person which may be occasioned by the work of construction, even in cases where such owners, tenants or other persons have no legal claim against the city for such injuries. \* \* \* In addition to all other liability for injuries to adjacent or abutting property or to buildings or structures thereon or for injuries to persons, the contractor shall fully meet and duly pay the amount of any loss or damage that any abutting or other owners or other persons may suffer by reason of any physical injury to property or person occasioned by any act or omission of the contractor or of any subcontractor or other person employed on the work."

1. I think that under the foregoing provisions of the contract the contractor has undertaken that the work covered by the contract involves no danger to buildings, and that if support of adjacent buildings becomes necessary in the prosecution of his work, it is the contractor's duty to support the buildings and to procure the license from the adjacent owner referred to in the building ordinance above mentioned.

2. The obligation of the city to secure and assure to the contractor the right to construct the railroad free from right, claim or other interference whether by injunction, suit for damages or otherwise, on the part of owners, abutting owners or other persons, does not require the Commission to put the contractor into physical possession of abutting property for the purpose of underpinning the same, but requires the city to protect him in the performance of his work against injunction, suit for damages or otherwise.

3. Under the case of *March v. The City*, 69 App. Div. 1, the contractor is justified in entering upon the property; and the courts would not enjoin such entry, but would leave the owner to his action for damages if there has been a technical trespass.

4. In so far as these clauses in the contract above cited are for the benefit of the property owner or tenant, a refusal on their part to permit the contractor to protect the property would, I think, operate as a waiver.

5. The provisions of the Building Code (section 22, chapter 15, of the ordinances of the city of New York) seem to be applicable to this situation, and in effect are said so to be by the per curiam opinion in the March case. Recourse may, therefore, be had under the provisions of the Building Code to the Commissioner of Buildings, to secure the safety of the building at the expense of the party whose duty it is to keep the same safe and secure.

Very truly yours,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

October 17, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I am in receipt of your communication, dated October 16, submitting to me a copy of a letter from the chief engineer's office and also one from the chief engineer of the Degnon Contracting Company, and a copy of the opinion of the counsel for the contractors.

I do not see how any good purpose can be subserved by continuing a discussion regarding the rights and duties of the contractor and the city under the contract. I was familiar with and had examined the cases referred to and the opinions of the Corporation Counsel and the counsel to the board, which are quoted at length in the opinion of the contractors' counsel, and took them into consideration when I rendered my opinion. It is true that no city department can interfere with or control the work of the subway construction carried on under your supervision as successor to the Board of Rapid Transit Railroad Commissioners, and that the authority of the Commission is paramount in all matters of construction and operation of the subways. Nevertheless, the Commission has no means at its command of placing the contractor in the physical possession of abutting private property. The contractor construes the contract as imposing a duty upon the city of placing him in possession of the property. I have pointed out an ordinance of the city vesting in one of its departments power so to do, but the contractor seems to think it should be accomplished in some other way. If he is right that the city has assumed this duty, I do not understand why he hesitates to appeal to the department of the city which has undoubtedly power in the premises. The paramount power vested in this Commission over control of subway construction, is no objection to the building department acting if this Commission so desires.

If the contractor is right that the city fails in its duty, the contract by its terms provides his exclusive remedy, namely, a claim for any damages which he may suffer through such default on the part of the city.

Yours truly,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

**Subway Construction—Access to Buildings for the Purpose of Shoring.**

**OPINION OF COUNSEL.**

October 8, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I am in receipt of your letter of September 24 transmitting a communication of Mr. Rice, chief engineer, which forwarded to you a letter of H. C. Sanford, chief engineer of Degnon Contracting Company, the contractor for Contract 9-0-2, Brooklyn loop, Centre street, from Pearl to Canal streets, referring to an obstruction to access to property, Nos. 174 and 176 Canal street, needed for necessary shoring of the building. Mr. Sanford says that tenants refuse access to the property and that one Max Well, who appears on the list as owner, gives no response to letters, and that the work of the contractors is hampered by failure to get access to the building. Mr. Sanford also states that under his contract the city covenants to secure the right to construct a railroad free from the interference of abutting owners and asks the Commission to take the necessary steps so that the contractor may not be hampered by having access denied along the route where necessary for shoring purposes. Mr. Rice also intimates that some doubt exists as to the limits of jurisdiction of the Public Service Commission and of the building department, and that it is desirable that the authority of the Commission be definitely determined.

1. The city's covenant referred to by Mr. Sanford is in words as follows (page 162 of the contract):

"The City hereby stipulates and covenants to and with the contractor that the City will secure and assure to the contractor so long as the contractor shall perform the stipulations of this contract the right to construct and to operate the

railroad as prescribed in this contract, free of all right, claims or other interference, whether by injunction, suit for damages or otherwise on the part of any owners, abutting owner or other person."

Among the stipulations which the contract undertakes to perform are these (page 153) :

"The contractor admits and covenants to and with the City that the plans and specifications and other provisions of this contract for construction, if the work be done without fault or negligence on the part of the contractor, do not involve any danger to the foundations, walls or other parts of adjacent buildings or structures, and the contractor shall at his own expense make good any damage that shall in the course of construction be done to any such foundations, walls or other parts of adjacent buildings or structures or to navigaton. But this covenant is not to be construed as applying to foundations, walls or other parts of buildings erected upon private property through which a railroad or any station entrance or approach shall be constructed."

And at page 156, as follows:

"The contractor shall obey any order of the Engineer to support or secure adjacent property or any surface or structure thereon, but the contractor shall not be relieved of responsibility either by compliance with any such order or by any failure or omission of the Engineer to give any such order or to give notice of any danger."

The Building Code also provides in respect of the support of buildings as follows (chapter 15, the Building Code, section 22) :

"Whenever an excavation of either earth or rock for building or other purposes shall be intended to be, or shall be carried to the depth of more than ten feet below the curb, the person or persons causing such excavation to be made shall at all times, from the commencement until the completion thereof, if afforded the necessary license to enter upon the adjoining land, and not otherwise, at his or their own expense, preserve any adjoining or contiguous wall or walls, structure or structures, from injury, and support the same by proper foundations, so that the said wall or walls, structure or structures shall be and remain practically as safe as before such excavation was commenced, whether said adjoining or contiguous wall or walls, structure or structures, are down more or less than ten feet below the curb. If the necessary license is not accorded to the person or persons making such excavations, then it shall be the duty of the owner refusing to grant such license to make the adjoining or contiguous wall or walls, structure or structures, safe, and support the same by proper foundations, so that adjoining excavations may be made, and shall be permitted to enter upon the premises where such excavation is being made for that purpose when necessary. \* \* \* If the person or persons whose duty it shall be to preserve or protect any wall or walls, structure or structures from injury shall neglect or fail to do so after having had a notice of twenty-four hours from the Department of Buildings, then the Commissioner of Buildings may enter upon the premises and employ such labor and furnish such materials and take such steps as in his judgment may be necessary to make the same safe and secure or to prevent the same from becoming unsafe or dangerous, at the expense of the person or persons whose duty it is to keep the same safe and secure."

Very truly yours,  
(Signed) ABEL E. BLACKMAR,  
Counsel to the Commission.

### Subway Construction — Duty of Contractor to Support Structure on East Side of Mott Street, Although Erected After Making Contract.

#### OPINION OF COUNSEL.

November 4, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.— I duly received your letter of September 23, transmitting a communication from Mr. Rice, chief engineer, dated September 20, as to underpinning the new buildings at the northwest corner of Mott and Delancey streets. This is in the portion of the Brooklyn loop lines to be built in the Delancey street extension, known as Contract 9-0-2, let to the Bradley Contracting Company.

The duty of the contractor to support abutting structures and the obligations which he has assumed to adjacent property owners have been referred to in my opinions of October 8 and October 17, in the matter of No. 174 Canal street.

The question now arising is whether the obligations referred to exist under the contract as to new structures in a new street, i. e., such as were not there when the contract was let and signed. In view of the following provisions of the contract I am of the opinion that the contract must apply to these new structures, and that the contractor is under obligation to support them in pursuance of the contract obligations.

The obligation of the contractor is to protect and support all buildings and other structures, including foundations (page 15), and including underpinning, wherever necessary, of all buildings affected or interfered with during construction of the railroad (page 17); as to excavation, contractor is to take special precaution where there is additional pressure due to the presence of buildings or other structures

(page 56). Also when passing specially heavy buildings which, by their construction or position, might bring a great pressure upon the trenches, the right is reserved by the board for the engineer to direct that such buildings be underpinned (page 57). The contractor also covenants that his work, if done without fault or negligence on his part, does not involve any danger to foundations, walls or other parts of adjacent buildings or structures, and that he will make good any damages that shall in course of construction be done to foundations, walls or other parts of adjacent buildings or structures (page 155); and the contractor also undertakes to obey any order of the engineer to support or secure adjacent property or any surface or structure thereon, but he is not relieved of responsibility either by compliance with an order of the chief engineer or an omission of the chief engineer to give it or give notice of danger (page 157). Contractor also assumes a very extensive responsibility for all physical injuries to the property of abutting owners occasioned by any act or omission of himself or of any subcontractor or person employed on the work. The contract runs over a period before completion of at least twenty months.

It does not seem reasonable to assume that in a contract to extend over two years in a crowded city street that the obligations of a contractor to abutting property owners and to adjacent property and structures can be limited to those in position at the time the contract is entered into, and that the constant changes in condition of property in the ordinary course of business and improvement for so long a period while the work is in process are to be entirely ignored and the owners' rights completely passed over. I have advised you that in my opinion new water pipes put in by the city itself, after the letting of a lump contract and requiring to be supported by the contractor as a subsurface structure, should be deemed to be extra work, for which an additional allowance may be proper, but the city is a party to such contract and must be deemed to have expressed its intention as to its own rights and obligations.

In this case, however, as to abutting property owners, obligations are undertaken by the contractor for the benefit of third parties as a class who are not parties to the contract, and it would seem to me that the obligation which the contractor has assumed must include every person of that class, not as of the time the contract is signed, but of the time when his rights and property are touched in the prosecution of the contract.

I think, therefore, that the obligation of the contractor is to underpin and support any structures which may be found to need such support, new or old, at the time when such support becomes necessary by reason of the prosecution of his work.

If I am in error on this point the contractor has his remedy under the terms of the contract. In the new Fourth avenue contracts, I have inserted a clause removing this uncertainty.

Very truly yours,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Occupation of Street by Structure Containing Boilers and Compressed Air Machinery Necessary for Use in Subway Construction — Power of the Commission to Grant Permit Therefor.

OPINION OF COUNSEL.

July 31, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I have received your communication enclosing a demand by the New York Dock Company that the structure containing boilers and compressed air machinery in Furman street, and claimed to be a nuisance and to be there without right, should be removed.

I requested Mr. Rice, the chief engineer, to report as to the character and situation of the structure, and have received from him a letter dated July 29th, stating that it was authorized under Permit No. 185, granted November 23, 1906, which was valid for the year 1906, but was lately extended to October 1, 1907, and also stating that it would be unwise to order the removal of the structure before October 1st, because it would be required to provide the air supply needed to complete the ventilating shaft now under construction on Joralemon street.

I recently read in the papers that the New York Dock Company had applied for a writ of peremptory mandamus directed to the officials of the city, commanding them to remove the structure as an encroachment upon the street and a nuisance, and that the same had been argued before Mr. Justice Scudder, of Kings county, and decision reserved. I communicated with the Hon. James D. Bell, of Corporation Counsel's office for the borough of Brooklyn, who confirmed this account. Colonel Bell informed me that he had opposed the granting of a mandamus.

The right of the Board of Rapid Transit Railroad Commissioners to issue permits to the contractors to occupy portions of the street has recently been before the Appellate Division of the Supreme Court, in the Second Department. In that case the plaintiff was a subcontractor under the Board of Rapid Transit Railroad Commissioners, and with the consent and pursuant to the permit of such board occupied certain streets in Brooklyn which crossed the street under which the construction was progressing. The occupation of such streets was without the permit

of the Borough President or the Commissioner of Public Works. These latter officials threatened to remove the plaintiff from the cross streets and the plaintiff brought an action to restrain such removal, claiming a right to occupy the same under the authority of the permit granted by the Rapid Transit Railroad Commissioners.

The motion for injunction was granted at Special Term, and the Borough President and Commissioner of Public Works appealed. On July 23d the Appellate Division handed down a decision affirming the order and finally deciding in favor of the validity of permits granted by the Board of Rapid Transit Railroad Commissioners for the occupation of streets and cross streets by contractors and subcontractors, so far as the same may be reasonably necessary to the prompt and proper progress of the work.

The power to grant such permits has devolved upon this Commission as successor of the Board of Rapid Transit Railroad Commissioners.

I retain the papers in this matter in my hands, in order that I might act thereon if occasion should require.

Yours very truly,  
(Signed) ABEL C. BLACKMAR,  
Counsel to the Commission.

## Relocation of Water Pipes on Permit Issued by the Commission But Not Submitted to the Department of Water Supply for Approval.

### OPINION OF COUNSEL.

August 6, 1907.

TRAVIS H. WHITNEY, *Secretary, Public Service Commission for the First District:*

SIR.—I am in receipt of your letter of July 24 transmitting a copy of communication of the Hon. John H. O'Brien, Commissioner of Water Supply, etc., requesting the Public Service Commission for the First District to take up with the Westchester Lighting Company the question of the removal of its main on Broadway, between Two Hundred and Thirtieth and Two Hundred and Forty-second streets, on the ground that the same was laid without the approval of the Commissioner or the Borough President, and because the space is soon to be needed for the placing of a new 12-inch water pipe, and asking also that hereafter all contractors working under the Public Service Commission be required to submit their plans for approval to the department of water supply under section 469 of the charter, where it becomes necessary to shift water or gas pipes or other subsurface structures.

Upon investigation of the facts by your chief engineer and by Commissioner Bassett, as reported in writing and transmitted also to me by you, it appears that the Westchester Lighting Company's pipe was relaid by a contractor for the building of superstructures for a rapid transit railway in that street under the terms and obligations of a contract between the contractor and the city, acting by the Board of Rapid Transit Railroad Commissioners, the pipe being a subsurface structure in the line of improvements and necessary to be relocated at the contractor's expense by the terms of this contract.

It was so relocated without a permit from the department of water supply, because under his contract with the city he was authorized and was bound to do it, and the corporation counsel and the courts have held that a permit of the Board of Rapid Transit Railroad Commissioners is sufficient authority for a contractor to proceed with work and because the permit of the Commissioner of Water Supply is unnecessary.

I am also informed by the chief engineer's report that the relocation and placing of the Westchester Lighting Company's pipe was with the knowledge of the officials of the department of water supply, and that there is sufficient room in the street for the placing of the proposed 12-inch water main without a removal of the gas main.

Under the circumstances I cannot see that the contractor or this board is under a duty to take up and relocate the gas pipe complained of, and I cannot advise you to undertake to do it.

The request of the commissioner that hereafter contractors working under the Public Service Commission be required to submit their plans for approval to the department of water supply under section 469 of the charter, when it becomes necessary to shift subsurface structures, introduces to this board the same question which was often brought to the attention of the Board of Rapid Transit Railroad Commissioners, whether in prosecution of its duties under the Rapid Transit Act and contracts made thereunder permits of various city departments are necessary to a use of the streets or to opening the same by the board or its officers or contractors.

The question was finally submitted to the Corporation Counsel and by the opinion of Mr. Delany, dated June 19, 1906, addressed to the Borough President, to be found in Vol. 7, page 4226 of the Rapid Transit Board's minutes, it was held that that board alone had control and that a permit from such board is all that is required to enable a contractor to proceed, and it was recommended to the Borough President that for the convenience of his office an arrangement be made whereby the Board of Rapid Transit Railroad Commissioners should notify the Borough President's office of each permit issued. The same question substantially has been in various forms also before the courts, and most recently in the case in the Second

Department, Appellate Division, not yet reported, brought by the Rapid Transit Subway Construction Company against Bird S. Coler as president of the borough of Brooklyn, to restrain the removal of the plaintiffs from cross streets occupied by them for the purposes of a construction contract without the permit of the Borough President.

In this case the court said: "It is apparent \* \* \* that it was the intent of the Legislature to confer upon the Commission all of the necessary powers properly to construct the subway, and this without concurrent action of the ordinary municipal authorities, except where such action was specifically required by the act. The power to grant a valid permit to a contractor or subcontractor to occupy an adjacent part of cross streets where such is necessary in the prosecuting of the work is \* \* \* an incidental power which the Commission possesses under the Act."

In regard to the placing of subsurface structures in the line of construction and necessary to be relocated by a contractor under such a contract made by the city pursuant to the Rapid Transit Act. I think the authority of the Commission is final and that this board or its contractor is not required by law to submit the plan of such relocation to the department of water supply, but it would seem well that the practice be observed of notifying the department of water supply of any proposed action by the contractor and of regarding, as far as may be practicable, its wishes in the matter.

Yours very truly,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Vaults in Fulton Street, Brooklyn, Taken by Condemnation for Subway Purposes — Rights of Abutting Owners as to Restoration.

### OPINION OF COUNSEL.

November 29, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—I have a letter of Mr. Norton, dated October 16, 1907, transmitting copy of a letter from Messrs. Jones, McKinnny & Steinbrink, of October 15, in which letter they, as attorneys for the Sterling Piano Company, the owner of No. 518 Fulton street, Brooklyn, complain that the subway contractors, building the subway under Fulton street, have refused to restore the vault maintained by the Sterling Piano Company under its premises, and threatening that if such restoration is not made to its satisfaction, it will have the work done and hold the city responsible for the cost.

The matter of vaults under the sidewalks was before the Rapid Transit Board in a number of cases. There is a difference in the legal situation between Manhattan and Brooklyn, due to the fact that in Manhattan the city owns the fee of the streets, while it does not in Brooklyn.

In answer to a number of complaints about interference with vault rights along Elm street in building the present subway, the counsel to the Rapid Transit Board advised that abutting property owners had merely revocable license to maintain these vaults, and that all their rights ceased on being notified by the chief engineer that the space occupied by them was necessary for rapid transit purposes. In Brooklyn it was necessary to institute a condemnation proceeding to acquire an easement to operate a rapid transit railroad through and under Fulton street, in which the oaths of the condemnation commissioners were filed on June 2, 1903, and which proceeding is still pending.

In answer to several complaints made by property owners on Fulton street against interference with their vaults, the counsel to the Board advised them of the institution of condemnation proceedings and referred them to the Corporation Counsel, evidently on the theory that these vault rights were covered by these proceedings (Minutes, Rapid Transit Board, Vol. 6, pages 3584, 3700).

In the case of the claim of the Sterling Piano Company, I find, on inquiry, that the only permit for vault privileges in connection with this building was one issued to C. F. Bond, president, on May 21, 1901, and that the subway, as originally planned, at this point, would take all of their vault space, but on the request of the Sterling Piano Company a further study of the plans was made, and it was found that by altering the design of the subway structure a space could be left over the roof of the depressed track of sufficient depth to permit them to still maintain a vault. This change was made to accommodate the Sterling Piano Company, but when it came to a question of restoring the vault they were not satisfied with the sub-contractor's offer to restore it with glazed tiles, such as are used in the subway stations, but demanded that the vault be restored with a very expensive tile, such as was used in the vault prior to the building of the subway.

In view of these facts it seems to me:

First.—That such vault rights as these abutting property owners had were extinguished by the condemnation proceeding, and that they were then placed in the same position as property owners in Manhattan whose vault licenses had been revoked, and that if entitled to any compensation their remedy is through the condemnation proceeding which is still pending; and

**Second.**—That under the Rapid Transit Act, the title to an easement through this vault vested in the city on the filing of the oaths of the condemnation commissioners on June 2, 1903, and that in maintaining such a vault without a further permit from the city the owner of the building is maintaining an illegal and unauthorized structure; and

**Third.**—That without reference to strict legal rights it is most unjust, where space for a vault remains, due to a change in the plans made to accommodate the property owner, that he should then seek to impose such an additional expense upon the city to restore a vault allowed him as a mere matter of favor.

I, therefore, desire to advise you that, in my opinion, the Sterling Piano Company, if it sees fit to restore this vault in the manner it proposes, has no right to impose the expense of doing it upon the city of New York.

Yours very truly,

(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Stipulation Not to Tear Down Wall at Wall Street Station of Subway Without Five Days' Notice to Owner.

### OPINION OF COUNSEL.

August 30, 1907.

*Public Service Commission for the First District:*

**GENTLEMEN.**—The case of *Potter v. Board of Rapid Transit Railroad Commissioners* was one brought to restrain the Board of Rapid Transit Railroad Commissioners from tearing down a wall which was built by the plaintiff in the entrance to the subway on the west side of Broadway at the Wall street station. The intention originally was to agree with the owner of the Empire building for an entrance from the subway into his building. This agreement failed, and the owner of the building built a wall cutting off the subway station. The Board claimed that the wall was built so as to include a space of twenty-five feet by ten feet, which was properly included within the station limits, and proposed to tear the wall down. The Potter estate, owning the Empire building, brought an action to enjoin the destruction of the wall. This action was tried before Justice Fitzgerald and resulted in a decision for the defendant, thereby sustaining our right to this space, and holding, as I am informed, practically that the wall was illegally erected.

This is not a matter of great moment now. The wall cuts off a space of twenty-five feet by ten feet, which is practically a recess, and which is of no particular value at present. However, when the Brooklyn tunnel is opened, a large passenger traffic will probably develop between this Wall street station and Brooklyn, and it may be necessary to enlarge this station. When this time arrives this space will be valuable. It is suggested by the plaintiff that, pending the appeal, we enter into a stipulation that we will not tear the wall down, except on five days' notice, so that he may have an opportunity to apply to the court for a stay. If we do not give this stipulation, he will apply immediately for a stay. In my opinion, the stipulation should be given, because, first, there is no reason why the wall should be torn down at present, as it would simply deface the station; and, second, if the plaintiff should now apply for a stay we would have no practical reason for opposing it, whereas, if we should reach a point where this space is needed for the enlargement of the station, and then the question of the stay should be brought before the court, we would have much stronger ground for opposing it.

I therefore suggest that you authorize me to enter into a stipulation upon these lines.

I inclose a diagram showing the space involved.

Yours very truly,

(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Application for Privilege of Window in Subway Wall — Procedure.

### OPINION OF COUNSEL.

August 22, 1907.

*TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:*

**DEAR SIR.**—I am in receipt of your letter of August 12, transmitting an application made by Mr. Burton Thompson for the privilege of putting a window in the subway wall at building No. 1 Wall street. He apparently makes his application on behalf of a corporation known as the "No. 1 Wall Street Corporation." On June 12, 1907, he made a similar application to the Board of Rapid Transit Railroad Commissioners.

The No. 1 Wall Street Corporation, under a contract with the Board of Rapid Transit Railroad Commissioners, which appears at page 4364 of the minutes in October last, appears to have an entrance from its building to the Rector street

station of the subway, constructed under the Brooklyn-Manhattan contract, known as Contract No. 2. The contractor, the Rapid Transit Subway Construction Company, and the assignee of the lease portion of that contract, namely, the Interborough Rapid Transit Company, are also parties.

Your inquiry is as to what procedure should be followed in applications for windows of this character, and includes the question whether it is necessary for the Interborough Rapid Transit Company first to consent before the consent of the Commission is given.

I have no doubt that before a show window or any window of the character desired by this applicant can be constructed in the wall of the subway structure the consent of the lessee, in this case the Interborough Rapid Transit Company, is essential. I think, also, inasmuch as the Brooklyn-Manhattan contract is not yet entirely completed, that the consent of the contractor for construction, the Rapid Transit Subway Construction Company, would also be essential.

As to procedure, I suggest that the consent of these corporations should be required *prior* to an application being made to this Commission for its consent and approval, though it would be practicable, if the terms of the application were satisfactory, to pass a resolution approving the application and stating specifically that the same should be subject to the consent of the Interborough Rapid Transit Company and the Rapid Transit Subway Construction Company, which in each case should be acknowledged and filed with the Commission.

I find that in the case of previous applications, after investigation by the standing committee on plans and contracts of the late Board, it was suggested that applicants should pay a uniform rate of one dollar per square foot per month for show window space, the owner of the window to pay all expenses of installation and the work to be done in accordance with plans approved by the Chief Engineer of the Board; that the terms should be subject to renewal annually, and the privilege subject to revocation by the Board on sixty days' notice in writing, and that the owners of the show windows save the city harmless from any and all injury which might be sustained to said show windows or premises in the rear of the same, or in any building erected thereon, by reason of anything of any nature whatsoever happening to said premises by reason of such show windows fronting on the subway. The consent of the Interborough Rapid Transit Company was also required, inasmuch as that company had called the attention of the Board to the provision of the Brooklyn-Manhattan contract, page 169, denying in general advertising privileges to that company, and suggesting that it was not consistent to grant such privileges to exceptional property owners.

I am now advised by the Chief Engineer that no show window privileges of this description have ever been granted, though in cases where property owners conveyed property or rights to the city some such privileges have been obtained.

Yours very truly,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*"

### Bond — Substitution of, by Rapid Transit Subway Construction Company in Place of \$1,000,000 Cash Deposited Under Contract No. 2, Not Allowable — Rapid Transit Act, Section 38, L. 1906, Ch. 472, Section 14.

#### OPINION OF COUNSEL.

October 31, 1907.

*Public Service Commission for the First District:*

GENTLEMEN.—You have referred to me the request of the Subway Construction Company to substitute a bond in the place of \$1,000,000 cash which was deposited by the contractor under Contract No. 2, for the construction of the so-called Brooklyn-Manhattan subway, as security for the construction agreement, with the request that I examine the same and advise as to procedure.

It seems to me that there was a serious question as to the legality of such proposed action I have therefore held the matter under advisement until the present time.

When Contract No. 2 was made, the law required a deposit of \$1,000,000 in cash or securities as security for construction, but permitted the continuing security for rentals to become due and generally for the performance of the terms of the contract, to be made either in the form of a continuing bond or of a deposit of cash or securities.

A deposit of \$1,000,000 in cash having been made under Contract No. 2, as security for construction, and also \$1,000,000 more in securities as a continuing security, the contractor requested permission to file a continuing bond and to have the \$1,000,000 deposited as continuing security released to him. A supplemental contract was thereupon made between the Board and the contractor altering the terms of the original contract so as to require a continuing bond with sureties in

the place of the deposit of securities, and said \$1,000,000 in securities which had been lodged for a continuing deposit were returned to the contractor.

The contractor now requests that the \$1,000,000 lodged as security for construction be returned upon a bond being given in its place, and the question is whether this may legally be done.

Assuming that this might legally be done as to a continuing security, it does not follow that the same power exists as to the security given for construction. The law in existence at the time the contract was made required a deposit of cash or securities to secure construction, but permitted either a deposit of cash or securities or a bond to be given for the continuing security.

Section 38 of the Rapid Transit Law authorized the Board and the contractor to agree to a change in the provisions of the contract. It might therefore, be held to follow that anything which could legally have been inserted in the original contract could be provided for in a supplemental one, and that in this manner a continuing bond could be substituted for the cash deposit and the cash returned. As, however, the law did not authorize a bond to be taken to secure construction in the first instance, it would seem to follow that unless there has been some change in the law this result cannot be accomplished by a supplemental contract.

The counsel for the contractor argue that under the Elsberg Bill of 1906, the Commission has the discretion to accept a bond instead of a cash deposit as security for construction, and that therefore, under section 38, it may make a supplemental contract or change in the original contract substituting a bond for the cash, and providing for the return of the cash. If the Elsberg Bill can be held to repeal or change the original law as applicable to contracts which had been executed before the Elsberg Law was passed, this conclusion might possibly follow, but such is not the case.

Section 14 of the Elsberg Law is as follows:

"Nothing in this act contained shall repeal, modify or alter any provision of the act hereby amended in respect of any railway or railways constructed, constructing or contracted for thereunder when this act takes effect; but the act hereby amended shall be and continue in full force and effect in respect of such railway or railways so constructed, constructing or contracted for, as if this act had not been passed."

This provision of the Elsberg Law, which is not printed in the Rapid Transit Act, seems to me to be conclusive upon this subject.

My opinion, therefore, is that no change in the contract can be made by agreement, under section 38, which shall contain a provision which could not legally have been inserted in the original contract under the law then in existence. As the law required that the contract should provide for a deposit of cash or securities to secure the agreement for construction, and it did not authorize the taking of a bond for that purpose, it is not in my opinion competent to make a supplemental contract at this time which shall authorize the substitution of a bond for the cash deposit.

Yours very truly,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

### Bond — Substitution of Bond of United States Fidelity and Guaranty Company for One of Lawyers' Surety Company, as Surety for American Bridge Company, as Sub-Contractor Under Contract No. I.

#### OPINIONS OF COUNSEL.

September 4, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I am in receipt of your letter of August 16, transmitting a request of the Lawyers' Surety Company and correspondence respecting a bond of that company as surety in \$200,000, to John B. McDonald, for the American Bridge Company, a sub-contractor under McDonald, for which bond it is proposed to substitute a similar bond of the United States Fidelity and Guaranty Company, stating that it is to have the same force and effect as though executed on May 29, 1900, the date of the bond first mentioned. The bond of the Lawyers' Surety Company was assigned to the city of New York under the provisions of the McDonald contract, as modified, and is on file with the Comptroller.

The bond proposed to be substituted was approved as to form by Mr. Rives, Counsel to the late Board of Rapid Transit Railroad Commissioners. A resolution was passed by the late Board on April 11, 1907, approving of such substitution of bonds, subject to the consent of John B. McDonald, and the Rapid Transit Subway Construction Company.

The Lawyers' Surety Company's request now is for leave to withdraw its bond first given in view of the substitution of the United States Fidelity and Guaranty Company.

I am informed by you that after an examination of your files made at my request, you are unable to find the consents described in the resolution on file in your office.

I think that the consents to substitution mentioned in the resolution of the late Board should be given by an instrument executed and acknowledged and filed with this Commission, and that such instrument should also specifically assign to the city of New York the bond so substituted, the same to stand in place of the one previously given by the Lawyers' Surety Company and so assigned.

I do not think, however, the bond of the Lawyers' Surety Company can properly be withdrawn even when such consents to substitution are given and filed.

Yours very truly,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

NEW YORK, October 7, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—I am in receipt of your letter of October 4, with which you sent me a letter of the Lawyers' Surety Company, which transmits consents of John B. McDonald and the Rapid Transit Subway Construction Company to a substitution of the United States Fidelity and Guaranty Company bond in place of one of the Lawyers' Surety Company, in the sum of two hundred thousand dollars. The last named bond was one given originally for four hundred and fifty thousand dollars as surety for the American Bridge Company to John B. McDonald, the American Bridge Company being a subcontractor under Mr. McDonald in the work of Contract No. 1.

The bond for four hundred and fifty thousand dollars of the Lawyers' Surety Company was, with the consent of the late Board of Rapid Transit Railroad Commissioners, in September, 1905, reduced to the sum of two hundred thousand dollars. It is now proposed to substitute for the Lawyers' Surety Company as surety, the United States Fidelity and Guaranty Company, who are to give a bond in the sum of two hundred thousand dollars.

The bond proposed to be substituted was approved as to form by Mr. Rives, Counsel to the late Board of Rapid Transit Railroad Commissioners, and a resolution was passed by the Board on April 11, 1907, approving of such substitution of bonds, subject to the consents of John B. McDonald, and the Rapid Transit Subway Construction Company.

I wrote you previously in respect to this matter under date of September 4, 1907, making a suggestion that the consents should be given by an instrument executed and acknowledged and filed with the Commission, and that there should be an assignment of the new bond to the city of New York, so that the same might stand in place of the one previously given by the Lawyers' Surety Company, which had been assigned to the city.

The consents which you now transmit, and the assignment of John B. McDonald to the city, which is also transmitted by you therewith, are apparently forwarded to the Commission in pursuance of the suggestion in my letter.

I find that the consents are in proper form and duly acknowledged, and that the assignment by John B. McDonald of the said bond proposed to be substituted to the city of New York, is in proper form and in accordance with the practice followed by the former Board in such matters, as appear at page 986 of the minutes, Vol. 2.

It will be necessary that this assignment shall be also executed by the Public Service Commission for the First District.

These papers, that is to say, the original consents, the original assignment and the bond of the United States Fidelity and Guaranty Company, should remain on file together, with the bond of the Lawyers' Surety Company, which, I believe to be already in your files or in those of the auditing department of the Commission.

The assignment of these subcontractors' bonds by Mr. McDonald as contractor under Contract No. 1, as additional security to the city, is in pursuance of a stipulation in the modification of the original Contract No. 1, which appears on page 235 of the contract.

Very truly yours,  
 (Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Violation of Eight Hour Law by Contractor for Subway Construction, Labor Law, Sections 3, 13.

### OPINION OF COUNSEL.

September 27, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:

DEAR SIR.—Referring to the letter of Mr. Norton, acting secretary, of the 20th inst., inclosing copy of letter from Mr. Rice, chief engineer, calling the attention of the Commission to the fact that the Bradley Contracting Company, the contractor for section 9-0-5 of the Brooklyn loop (Delancey street, between Bowery and Norfolk), has not complied with the contract in respect to requiring laborers to work more than eight hours a day, despite the fact that the chief engineer has twice

called his attention to this violation. I desire to advise you that the contract under which the Bradley Contracting Company is constructing this section of the Brooklyn loop line provides:

"The contractor agrees to comply with the provisions of the Labor Law, including section 3 thereof, as re-enacted by chapter 506 of the Laws of 1906. The contractor further agrees and stipulates that no laborer, workman or mechanic in the employ of the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by this contract, shall be permitted or required to work more than eight hours in one calendar day, except in cases of extraordinary emergency caused by fire, flood or danger to life or property; and further that the wages to be paid for a legal day's work as hereinbefore defined to all classes of such laborers, workmen or mechanics upon the work contemplated by this contract, or upon any material to be used upon or in connection therewith, shall not be less than the prevailing rate for a day's work in the same trade or occupation in the borough of Manhattan, where the work hereby contemplated, about or in connection with such labor, is performed, as in its final or completed form to be situated, erected or used, and that each such laborer, workman or mechanic employed by the contractor or by any subcontractor or other person on, about or upon the work contemplated by this contract, shall receive such wages herein provided for. This contract shall be void and of no effect unless the contractor shall comply with the provisions of this paragraph. In obedience to the requirements of section 13 of the Labor Law, it is further provided that if the provisions of the said section are not complied with this contract shall be void."

This provision of the contract is inserted in pursuance to the express direction of the Legislature, and although the earlier statute of 1897 was declared unconstitutional it has been re-enacted by the Legislature upon the adoption of a constitutional amendment authorizing legislation of this character. The amendment to the Constitution, Article XII, section 1, adopted at the general election of 1905, which went into effect January 1, 1906, provides:

"Section 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and contracting debt by such municipal corporations; and the Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil division of the State, of by any contractor, or sub-contractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof."

Pursuant to this provision the Legislature, by the provisions of chapter 506 of the Laws of 1906, re-enacted section 3 of chapter 415 of the Laws of 1897, which had been declared unconstitutional prior to the adoption of the amendment to the Constitution.

"Section 3. Hours to constitute a day's work.—Eight hours shall constitute a legal day's work for all classes of employees in this State, except those engaged in farm and domestic service unless otherwise provided by law. This section does not prevent an agreement for overwork at an increased compensation except upon work by or for the State or a municipal corporation, or by contracting or sub-contractors therewith. Each contract to which the State or a municipal corporation is a party which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workmen or mechanic in the employ of the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day except in cases of extraordinary emergency caused by fire, flood or danger to life or property. The wages to be paid for a legal day's work as hereinbefore defined to all classes of such laborers, workmen or mechanics upon all such public works, or upon any materials to be used upon or in connection therewith shall not be less than the prevailing rate for day's work in the same trade or occupation in the locality within the State where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Each such contract hereafter made shall contain a stipulation that each such laborer, workman or mechanic employed by said contractor, sub-contractor or other person, on, about or upon such public work, shall receive such wages herein provided for. Each contract for such public work hereafter made shall contain a provision that the same shall be void and of no effect unless the person or corporation making or performing the same shall comply with the provisions of this section; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the State or of a municipal corporation pay the same or authorize its payments from the funds under his charge or control to any such person or corporation for work done under any contract, which in its form or manner of performance violates the provisions of this section, but nothing in this section shall be construed to apply to persons regularly employed in State institutions, or to engineers, electricians and elevator men in the department of public buildings during the annual session of the Legislature, nor to the construction, maintenance and repair of highways outside the limits of cities and villages."

The Supreme Court of the United States in 206 U. S., considered the constitutionality of such legislation and upheld the constitutionality of an Act of Congress providing that eight hours should constitute a day's work under Federal contracts. This would seem to remove all doubt as to the constitutionality of this legislation.

I should advise that peremptory notice be given the Bradley Contracting Company to obey the requirements of its contract and that in case of failure to remedy this violation within the time specified in the notice, the Commission may declare this contract to be void and request the comptroller to make no payments therefor.

Yours very truly,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

The Secretary was directed to send peremptory notice to the contractor, as suggested by the Counsel.

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### **Lease of Permanent Offices by the Commission not to be Submitted to the Commissioners of the Sinking Fund — Designation of Newspapers for Rapid Transit Advertisements — City Charter, Sections 149, 217; Public Service Commissions Law, Section 10; Rapid Transit Act, Sections 36, 37.**

#### **OPINION OF COUNSEL.**

NEW YORK, July 31, 1907.

TRAVIS H. WHITNEY, Esq., *Secretary, Public Service Commission for the First District:*

DEAR SIR.—I am in receipt of your letter of July 20, advising me of a resolution of the Commission, referring to me the question as to whether the lease of permanent offices by the Commission should be submitted to the Sinking Fund Commission for approval, and also the question of the designation of newspapers for Rapid Transit advertisements.

Mr. Semple, of this office, in a conversation yesterday with Deputy Comptroller Phillips and Mr. Brown, of the finance department, real estate bureau, was informed by them that in their opinion leases by the Public Service Commission for the First District should be submitted for approval to the commissioners of the sinking fund, because the commissioners of the sinking fund are "Trustees of Public Buildings" within the meaning of section 10 of the Public Service Commissions Law, and also because under section 217 of the city charter, applications for leases for the purposes of the city of New York or any of the counties contained within its territorial limits, must be presented to and passed upon by the commissioners of the sinking fund; and by section 149 of the charter, when such leases are authorized by the board of sinking fund commissioners, they must be entered into by the Comptroller on behalf of the city.

I am of the opinion, however, that the reference in section 10 of the Public Service Commissions Law to trustees of public buildings applies only to those officials who are defined by the Public Buildings Law as trustees of public buildings, viz., the Governor, Lieutenant-Governor and Speaker of the Assembly, who by that act are entrusted with the control of specified public buildings in Albany, and that the words "Trustees of Public Buildings" do not include the commissioners of the sinking fund of the city of New York.

The provisions of section 217 of the charter are with respect to leases of real estate for the purposes of the city of New York or in the counties contained within its territorial limits. This section was taken from the Consolidation Act of 1882, chapter 410, passed many years prior to the enactment of the Rapid Transit Act, and in my opinion it is limited in its operation to the purposes mentioned. The lease of offices for the Public Service Commission is not for the purposes of the city of New York or any of the counties contained within its territorial limits, but for the purposes of a State commission. It is significant also that the Board of Rapid Transit Railroad Commissioners did not submit leases to the commissioners of the sinking fund for approval, but made the same directly.

By section 149 of the charter, leases when approved by the Commissioners of the Sinking Fund are required to be entered into by the Comptroller on behalf of the city; but there is a provision later on in this section to the effect that nothing therein contained shall affect the Board of Rapid Transit Railroad Commissioners.

I am therefore of the opinion that the lease by the Public Service Commission for the First District of its permanent offices need not be submitted for approval to the Commissioners of the Sinking Fund.

Respecting the further question as to the designation of newspapers for Rapid Transit advertisements, the reading of the Rapid Transit Act seems plain. The Mayor designates the newspapers in which hearings on the form of contract are advertised, and the Public Service Commission, as the successor to the Board of Rapid Transit Railroad Commissioners, designates the newspapers in which the contracts are advertised for letting. (See sections 36 and 37 of the Rapid Transit Act.)

Very truly yours,  
(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

## Steinway Tunnel—Position of Commission Concerning Operation.

OPINION OF COUNSEL.

November 9, 1907.

**TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission for the First District:**

DEAR SIR.—I duly received your letter of September 17 requesting me to give you my opinion as to whether the commencement of operation of the Steinway tunnel will in any way prejudice any rights that the Commission may have in any legal proceedings undertaken looking to the prevention of operation and ownership of this tunnel by the alleged company now in charge of the work.

The courts have held that an injunction is not necessarily to be granted in every case, and that acquiescence or laches of a complainant is to be regarded on any application for such relief in equity; and although this principle does not apply in a case where a public body is complainant with the same force as where a private individual is, yet it deserves consideration.

I therefore think that the Commission should not acquiesce in any operation of the Steinway tunnel; but upon being placed in possession of evidence that operation is about to begin, the Commission should consider carefully whether an application to the courts to enjoin the operation should not be made.

Yours very truly,

(Signed) ABEL E. BLACKMAR,  
Counsel to the Commission.

## Steinway Tunnel—Resume of Rights of Company and Pending Litigation Affecting.

OPINION OF COUNSEL.

November 21, 1907.

**HON. MILD R. MALTBY, Commissioner, Public Service Commission for the First District:**

DEAR MR. MALTBY.—I have your letter of the 13th inst., asking for a brief summary of the situation in regard to the Steinway tunnel, and particularly as to (1) "What litigation is now pending in the courts?"

and

(2) "What court decisions have been rendered upon the question of the right of the company to construct and to operate the road?"

In reply I have to state as follows:

The New York and Long Island Railroad Company was incorporated July 30, 1887, under chapter 140 of the Laws of 1850, known as the General Railroad Act, for the purpose of constructing and operating a railroad five miles long, more or less, from a point in Long Island City, one mile from the East river, thence partly underground and partly in cutting to the river, thence under the river, and thence by tunnel under certain streets in New York city.

Its corporate existence was to be ninety-nine years.

Its capital stock was to be \$100,000, consisting of 1,000 shares of \$100 each.

The General Railroad Act of 1850, under which the company was incorporated, was amended by chapter 775 of the Laws of 1867, which provided, among other things, that if any corporation formed under the Act of 1850,

"shall not, within five years after its articles of association are filed and recorded in the office of the Secretary of State, begin the construction of its road, and expend therein ten per cent, on the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing its articles of association, as aforesaid, its corporate existence and power shall cease."

The route of the road and tunnel, as constructed, is approximately as follows:

From Park avenue and Forty second street, Manhattan, under Forty-second street; thence under the East river to approximately the west end of Fifth street, Long Island City; and thence under private property to Fourth street and under Fourth street to a point between Jackson avenue and Van Alst avenue, Long Island City.

The route thus consists of three main sections, namely:

(1) Park avenue to the East river.

(2) Under the East river.

(3) From the river to the Long Island terminus.

The company bases its right to construct and operate its road over this route in the main on three consents, as follows:

(1) Resolution of the Board of Aldermen of the old city of New York, approved December 31, 1890.

(2) Patent issued by the State of New York January 5, 1891.

(3) Resolution of the Board of Aldermen of Long Island City, approved October 27, 1891.

By the first resolution, above mentioned, the city assented "to the construction of a double track railroad by the New York and Long Island Railroad Company, in, by and through a tunnel beneath the surface of 42nd street, from its easterly end, to a point therein between 10th and 11th Avenues, in said City, with such connections, branches, turn-outs, sidings and switches, as may be requisite and necessary, in accordance with the plans and profiles of such railroad heretofore deposited with this Board, or such modification thereof as shall be approved by the Commissioner of Public Works of such City."

The consent of the State of New York, above mentioned, was granted by the following patent:

"The People of the State of New York, by the Grace of God, Free and Independent: To all to whom these Presents shall come, Greeting:

"Know Ye, That pursuant to Chapter 140, Laws of 1850, as amended by Chapter 601, Laws of 1886, and a resolution of the Commissioners of the Land Office, adopted November 25, 1890, we have given and granted, and by these presents do give and grant unto the New York and Long Island Railroad Company, its successors and assigns, a right of way 99 feet in width and 50 feet in height within which to construct a tunnel for the use and operation of the above named grantees railroad, beneath the waters of the East River upon and along the route of said railroad between the City of New York and Hunter's Point in Long Island City, as shown in plan and profile, upon the charts filed in the office of our Secretary of State with the water grant papers of the month of January, 1891.

Together with all and singular the rights, hereditaments and appurtenances to the same belonging or in any wise appertaining: To have and to hold the above described premises unto the said the New York and Long Island Railroad Company, its successor and assigns forever.

In TESTIMONY WHEREOF, we have caused these our letters to be made patent, and the Great Seal of our said State to be hereunto affixed \* \* \*."

By the second resolution, above mentioned, Long Island City assented to the construction of a double track railroad

"Beginning at a point under the ground at or near the westerly end of 5th Street and in the middle line thereof at low water mark, on the east side of the East River, in said City; thence running easterly beneath streets and private property to a point at or near the intersection of 4th Street and West Avenue; thence along 4th Street to or near Van Alst Avenue, with a station hereafter to be located between the easterly shore of the East River and Van Alst Avenue; thence northeasterly by a curved line to Meadow Street \* \* \*."

For compensation to the city the New York city ordinance provided that the company should

"pay annually to the City of New York three per centum of its gross earnings or receipts from transportation of persons and property on its railroad within said city: such payment to be exclusive of all taxes levied by and payable to the City of New York on the real or personal property, capital stock or income of said company, and the books of said company showing the amount of its said gross earnings or receipts shall at all reasonable times and hours be open to the inspection of the Comptroller of the City of New York (or to his duly authorized agents) for the purpose of verifying the returns thereof of said company."

The company's contractor started work in May, 1892, and up to July 30, 1892, there was claimed to have been expended the sum of \$11,718.33, or more than 10 per cent of the capital stock of the company. Work continued down to December, 1892, when an explosion occurred, whereupon the work ceased for nearly thirteen years, that is, until 1905, when work was again started. In thus resuming operations, the company relied upon chapter 775 of the Laws of 1867, and various subsequent acts, the last of which was chapter 397 of the Laws of 1903, as extending until January 1, 1907, the time within which to complete the road.

In August, 1905, the company obtained from the fire commissioner of the city of New York licenses to use and keep explosives at four shafts where it was prosecuting its work, and in October and November of the same year it obtained permits from the building department to erect certain temporary structures. On January 22, 1906, the inspector of combustibles of the fire department of the city of New York informed the Deegan Contracting Company, which company was doing the work, that four permits for blasting had been revoked by "direction of the Corporation Counsel." Two days later, on January 24, 1906, the superintendent of buildings for the borough of Manhattan informed the contracting company that certain building permits were revoked "for the reason that the right to build this tunnel is disputed."

Thereupon, by summons and complaint dated February 8, 1906, the railroad company began action against the fire commissioner of the city of New York, the inspector of combustibles of the fire department, the superintendent of buildings of the borough of Manhattan, and the city of New York, to stay the revocation of these permits. The answers of all defendants were served February 9, and issue was joined by the service of an amended answer on April 17, 1906. A preliminary injunction was thereupon granted.

As to the matters at issue in this case, the company, presumably because it felt that its right to construct the tunnel was challenged, considered it necessary or at least advisable to allege and establish its two-fold right to carry on its work and to obtain an injunction restraining interference on the part of the city authorities. Accordingly, it alleged its due incorporation and its compliance with the legal requirements necessary to entitle it to construct, maintain and operate its proposed railroad.

By their amended answer the defendants put in issue, or attempted so to do, all of the material allegations of the complaint.

The position of the company, as stated subsequently by its counsel, was as follows:

"By the arbitrary act of the officials above referred to, in seeking to revoke permits which they had theretofore duly issued, after careful deliberation the plaintiff (that is, the railroad company) was placed in the position where it was compelled, in order that it might continue the prosecution of the work of constructing its railroad, to appeal to the Court for an injunction restraining the arbitrary and unwarranted intervention by those officials. The defendants (that is, the city authorities) thereby threw upon the plaintiff the burden of establishing its right to construct its railroad."

When the matter came before Mr. Justice Blanchard of the Supreme Court, on a motion to continue *pendente lite* the preliminary injunction, the justice, in his opinion printed in the Law Journal of March 7, 1906, went into the rights of the company and the city at some length. He was inclined to sustain the contention of the company to the effect that it was duly incorporated, and that the acts under which it based its right to prosecute its work were constitutional and valid. He said:

"Independent of the foregoing consideration, however, the validity of the plaintiff's franchise, in which a large amount of capital is invested and great public interests are concerned, cannot properly be determined upon affidavits. To resolve this question now against the plaintiff would permit such interference with the plaintiff's work as would prevent its completion within the time set therefor, upon which its franchise is conditional. The plaintiff will be irretrievably damaged if the doubt were now resolved against. The defendant, on the other hand, cannot be prejudiced by the postponement. For this reason the Court may well refuse to determine the question upon the present motion, and, instead may properly make a restraining order permitting the continuance of the work under the alleged franchise until the question may be tried in Court according to the rules of evidence. Upon this ground, as well as upon the merits, the plaintiff's move for a continuation *pendente lite* of the preliminary injunction is granted."

The case came on for trial before Mr. Justice Fitzgerald in June, 1906. In his conclusions of law, Mr. Justice Fitzgerald found that

(1) "The plaintiff had acquired at the time of the beginning of this action, and now has, due legal power and lawful authority to construct and operate its tunnel and railroad."

(2) "There was no warrant or authority in law for the attempted revocation of any of said licenses and permits, either for the use of explosives or for temporary buildings; and said licenses and permits were and are of full force and effect."

(3) "The time of the plaintiff to complete the construction of its tunnel will expire on the 31st day of December, 1906."

(4) "The plaintiff is entitled to judgment \* \* \* restraining the defendants, the City of New York \* \* \* from in any respect molesting or interfering with the plaintiff or the Degnon Contracting Company, in the construction of the plaintiff's tunnel and railroad."

In his opinion, printed in the Law Journal on November 14, 1906, Mr. Justice Fitzgerald said:

"The validity of plaintiff's incorporation under the provisions of the General Railroad Act of 1850, as affected by various subsequent statutes, particularly the prohibition of Chapter 10, Laws of 1880, applicable only to the City of New York, the constitutionality of the Tunnel Act, Chapter 582, Laws of 1880, the alleged failure of the defendant in any event to comply with its provisions, the legality of the consents of the local authorities and of the abutting owners, the lapsing by expiration of time of the defendant's franchise and its failure to comply with statutory requirements in the matter of the change of route, were all sharply presented and definitely determined."

when the matter was before Mr. Justice Blanchard.

Inasmuch as no attempt had been made to distinguish the facts presented before Mr. Justice Fitzgerald from those presented on the motion, Mr. Justice Fitzgerald stated that he considered the doctrine of *stare decisis* was applicable to the matter as it came before him. Accordingly, he rendered his decision for the company and judgment was thereupon entered.

The appeal from this judgment was argued in the Appellate Division in October of the present year, and a decision should be expected shortly from the Appellate Division.

In addition to the first action a second action was brought by the city of New York in February of the present year. The substance of this second action is, that the corporate existence and powers of the railroad company ceased January 1, 1907, and that its work since that time has been carried on without legal authority. Accordingly, the city asked judgment permanently enjoining and restraining the construction and operation of the railroad, declaring the corporate existence and powers of the company to have ceased and also declaring the franchise granted by the city of New York and Long Island City to be forfeited and void. To this complaint the company demurred, and the demurrer was argued before Mr. Justice Davis of the Supreme Court, October 8, 1907.

Trusting that the above may be of assistance in this matter, I am,

Yours very truly,

(Signed) ABEL E. BLACKMAR,  
Counsel to the Commission.

## Pennsylvania Tunnel — Jurisdiction of Commission.

### OPINION OF COUNSEL.

December 16, 1907.

*Public Service Commission for the First District:*

DEAR SIRS.—I return herewith letter of Mr. Walter B. James of the 6th inst., complaining of the condition of East Thirty-third street, in the borough of Manhattan, between First avenue and the East river, and of the condition of Seventh and Eighth avenues between Thirty-second and Thirty-third streets, at both of which points the Pennsylvania, New York and Long Island Railroad Company is engaged in constructing a subway, which letter was referred to me for an opinion whether the Commission had jurisdiction to act upon this complaint.

The so-called Pennsylvania tunnel is being constructed under a certificate granted by the former Rapid Transit Board to the Pennsylvania, New York and Long Island Railroad Company dated October 9, 1902, which contained the following provisions germane to this complaint:

Paragraph VI, page 18.—“The tunnel company shall at all times keep paved with smooth pavement in such manner as may be reasonably required by the municipal authorities having care of the streets, and shall at all times keep in thoroughly good condition the portions of 31st and 33rd Streets between 7th and 8th Avenues and between 8th and 9th Avenues.”

Paragraph VI, page 19.—“All plans for, and the method of doing, the work shall from time to time be subject to the approval of the Board.”

Paragraph XIII, page 20.—“The City, the Board, and all duly authorized representatives of the City, shall have the right at all reasonable times to inspect the railroad and any part thereof, and to enter thereon when necessary for the examination, supervision or care of any property of the City or for any proper purpose.”

From these franchise provisions it seems to me to be plain that the construction of this tunnel is at all times subject to the jurisdiction of the Commission as the successor of the Rapid Transit Board, and that the Commission has complete power to order the railroad company or its contractors to live up to their franchise covenants.

In this connection, I think it well to call the attention of the Commission to the fact that for certain portions of the work, the Rapid Transit Board on February 14th last granted to the railroad company the right to make excavations from the surface on certain portions of the line. These permits were four in number and allowed excavation from the surface at the following places:

From a point on West Thirty-third street 400 feet west of Sixth avenue, for not more than 500 feet running east;

From a point on West Thirty-third street 20 feet west of Fifth avenue, for not more than 600 feet running west;

From a point on West Thirty-second street 200 feet west of Madison avenue, for not more than 650 feet running west;

And from a point on West Thirty-third street 600 feet west of Sixth avenue, for not more than 750 feet running east.

These permits expressly provide that temporary street surfaces shall be maintained and that upon the completion of the work they shall be replaced with asphalt subject to the specifications of the bureau of highways.

At the time of granting these permits, the following resolution was adopted:  
(Rapid Transit Minutes, page 4686.)

“Resolved, That this Board hereby directs its Chief Engineer to maintain a constant supervision of the method and progress of the work of construction, etc., under the permits this day authorized to be granted to the Pennsylvania, New York and Long Island Railroad Company.”

Although repaving is required by the provision above quoted to be done in such manner as may be reasonably required by the municipal authorities, I do not think that this ousts the Commission of its right of regulation, but that the Rapid Transit Board, by the terms of the franchise, gave concurrent rights of regulation in some respects to the other city authorities. Section 32 of the Rapid Transit Act, under which the Rapid Transit Board acted in granting this certificate, provides that the Board shall fix and determine the locations and plans of construction of the railroad and to include in the contract such terms, conditions and requirements as to the Board may appear just and proper. The act further provides that such grant shall be deemed a contract between the city and the railroad company.

As the railroad company has, therefore, agreed with the city through the Rapid Transit Board in the particulars above specified, this Commission has, in my opinion, the right to compel the railroad company to live up to such agreements.

Yours very truly,

(Signed) ABEL E. BLACKMAR,  
*Counsel to the Commission.*

**Jurisdiction of the Commission over Subway of Hudson and  
Manhattan Railroad Company—Noise at Night in Work  
of Construction—Public Service Commissions Law, Sec-  
tion 48.**

**OPINION OF COUNSEL.**

September 19, 1907.

TRAVIS H. WHITNEY, Esq., Secretary, Public Service Commission, for the First District:

DEAR SIR.—Referring to the letter of S. Marks, dated September 6, 1907, which I return herewith, complaining of the noisy night construction work on that portion of the tunnel now being built by the Hudson and Manhattan Railroad Company, which is under Mr. Marks' premises, No. 419 Sixth avenue, in the borough of Manhattan, transmitted to me with the letter of the Secretary to the Commission of the 10th Inst., asking my opinion as to the extent of the Commission's jurisdiction over such tunnel, I desire to advise you that, in my opinion, such tunnel and the method of doing the work therein is within the jurisdiction of the Commission.

With reference to section 48 of the Public Service Commissions Law, which, I think, is of itself sufficient to vest the Commission with jurisdiction, the contract between the tunnel company and the city as embodied in the certificate of the Board of Rapid Transit Railroad Commissioners to the tunnel company of February 2, 1900, provides, paragraph V:

"All plans for, and the method of doing, the work, including all plans for stations and station arrangements, shall, from time to time be subject to the approved by the Board."

And further, paragraph XIII:

"The City, the Board and all duly authorized representatives of the City, shall have the right at all reasonable times to inspect the railroad and any part thereof, as well during construction as afterwards, and to enter thereon when necessary for the examination, supervision or care of any property of the City or of abutting property owners, or for any proper purpose. Nothing in this franchise shall be deemed to diminish or affect the sanitary or police jurisdiction which the public authorities shall lawfully have over property in the City."

It would also appear that by the terms of the contract under which the construction work is being done by and on behalf of the Hudson and Manhattan Railroad Company, of which contract form a copy is on file with the Commission, that the contract is subject to the provisions of the franchise and of the certificate of the Board of Rapid Transit Railroad Commissioners granting the same, and that the provisions thereof are superior to and supersede any conflicting provisions of the contract, and that the contractor shall in the execution of the works, and notwithstanding anything in the contract contained in all respects conform to the requirements of the franchise and certificate. The contract also provides that the methods of doing the work under the contract shall be subject to the approval of the Board; that the contractor shall in all matters relating to the works conform to all valid regulations and requirements of law or of any State, municipal or other governmental or public authority; that the blasting shall be carried out with great care, so as not to disturb any adjacent properties or improvements, either public or private, and that the contractor shall indemnify and save harmless the Hudson and Manhattan Railroad Company against and from all loss and damage arising from the failure of the contractor or of those acting under him to conform to the requirements of the said franchise, and the provisions of the certificate granting such franchise, or to conform to the valid regulations and requirements of law or of any State, municipal or other governmental or public authority.

The Commission in the light of the above provisions can either itself investigate the complaint or call the matter to the attention of the tunnel company in accordance with the provisions of section 48 of the Public Service Commissions Act.

Yours very truly,  
(Signed) A. E. BLACKMAR,  
*Counsel to the Commission.*

## **ORDERS OF THE COMMISSION ISSUED IN 1908.**

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Pursuant to the provisions of the Public Service Commissions Law, copies of each order issued during the year 1908 are here published, except that as blank forms were used in issuing certain complaint, extension and hearing orders, it has been deemed unnecessary to repeat in publishing such orders that part which is uniformly the same in each respectively.

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**Note. 1.—COMPLAINT ORDERS.** Such orders were issued in substantially the following form:

Tribune Building, 154 Nassau Street,  
Borough of Manhattan, City of New York.

STATE OF NEW YORK,  
PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT.

..... <i>Complainant,</i> against ..... <i>Defendant.</i>	Case No. — Complaint Order
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This matter coming on upon the complaint of ....., by which it appears that said complainant is aggrieved by acts done or omitted to be done by ....., said defendant, and set forth in said complaint, which are claimed to be in violation of some provision of law, or of the terms and conditions of defendant's franchise, or of an order of this Commission,

Now, upon the said complaint, it is

**Ordered:** That a copy of the said minutes be forwarded to the said defendant and that the matters therein complained of be satisfied or the charges in said complaint set forth be answered by said defendant within ten days after service upon it of this order, exclusive of the day of service.

110 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

**Note 2.—EXTENSION ORDERS.** Orders extending the time within which to answer complaints were issued in substantially the following form:

Tribune Building, 154 Nassau Street,  
Borough of Manhattan, City of New York.

STATE OF NEW YORK,  
PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT.

..... <i>Complainant,</i> <i>against</i> ..... <i>Defendant.</i>	Case No. — Extension Order
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An order, No. ...., having been made herein on or about the ..... day of ...., ordering and directing the ..... Company to answer the complaint herein within a time therein specified, and the said ..... Company, having on ....., 19.., applied in writing for an extension of such time,

Now, on motion, it is

**Ordered:** That the time of the ..... Company within which to answer said complaint be and the same hereby is extended to and including the ..... day of ....., 19...

**Note 3.—HEARING ORDERS.** Such orders upon complaints and answers were issued in substantially the following form:

Tribune Building, 154 Nassau Street,  
Borough of Manhattan, City of New York.

STATE OF NEW YORK,  
PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT.

..... <i>Complainant,</i> <i>against</i> ..... <i>Defendant.</i>	Case No. — Hearing Order
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Upon the complaint of ..... herein, dated ..... on which order No. .... was issued, and the answer of ..... thereto, dated .....

**Ordered,** That upon the matters therein a hearing be had on the ..... day of ....., 19.., at ..... o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at 154 Nassau Street, Borough of Manhattan, City and State of New York, to the end that the Commission may make such order or orders in the premises as shall be just and proper,

*Further Ordered*, That ..... of ..... , Borough of ..... , New York City, and the said ..... Company, be given at least ..... days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing they may be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

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## ORDERS FOLLOWING APPLICATIONS FOR PERMISSION TO ISSUE STOCKS, BONDS AND OTHER SECURITIES.

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**Brooklyn Union Elevated Railroad Company — Nassau Electric Railroad Company.**— Application of Brooklyn Union Elevated Railroad Company for authority to issue a mortgage of \$20,000,000, and of Nassau Electric Railroad Company to issue a mortgage of \$5,000,000.

Opinion of Commissioner McCarroll.  
Final Order No. 643.  
Final Order No. 642.

Application was made by the Nassau Electric Railroad Company for consent to the issuance of a mortgage to secure \$5,000,000 of demand certificates and by the Brooklyn Union Elevated Railroad Company for consent to the issuance of a mortgage to secure \$20,000,000 of demand certificates.

The applications were made to the former Board of Railroad Commissioners but were not acted upon by that board and proceedings were continued before the Public Service Commission.

The Brooklyn Rapid Transit Company has stock control of all the street surface and elevated railroad companies in Brooklyn except the Coney Island and Brooklyn Railroad Company and the Van Brunt Street and Erie Basin Railroad Company. It holds in excess of 95 per cent of the stock of each of these different companies and also holds some of their bonds. The management of the property of all these companies is actually conducted by the Brooklyn Rapid Transit Company.

In 1902 the stockholders of the Brooklyn Rapid Transit Company authorized a mortgage upon the property of their company, consisting of the stocks and bonds of the companies mentioned, to secure bonds at a total amount not exceeding \$150,000,000, bearing interest at a rate not higher than 4 per cent, payable July 1, 2002, and subject to redemption before July 1, 2000, upon payment of a premium of 10 per cent and after that date at par. The mortgage provides that a sufficient amount be reserved to refund bonds secured by the \$7,000,000 mortgage of the Brooklyn Rapid Transit Company already existing and also of the various companies whose stock is held as these bonds become due or sooner if the exchange can be made with advantage to the company. Under this provision \$61,065,000 of bonds have been reserved. Under this mortgage there had been issued up to June 30, 1907, \$32,702,000, of which \$27,702,000 had been issued upon the deposit of securities purchased and certificates of indebtedness of subsidiary companies. The bonds sold did not realize par, the discount upon the issues made amounting to \$4,854,955.

The financial procedure connected with the issuance of bonds under the mortgage is as follows:

Whenever expenditures for construction or betterments are required for any companies comprised in the Brooklyn Rapid Transit system, the board of directors or the executive committee of the Brooklyn Rapid Transit Company, upon engineer's estimates submitted by the president or vice-president, authorizes in advance all such expenditures. The heads of departments, by or under the supervision of which the work is to be done, then prepare formal resolutions known as authorizations showing the title of the work required to be done and other details together with estimated cost. The account to which the work is to be charged is indicated by the comptroller and stamped upon the face of the authorization. The formal authorizations are approved by the vice-president and general manager and finally by the president of the company. The work is then undertaken and completed by the Transit Development Company, one of the companies in the Brooklyn Rapid Transit system, acting under general contract dated February 28, 1907, for and on account of the company benefited. All companies make monthly payments out of their current funds to the Transit Development Company for all construction work done as it progresses. If the companies are not in funds they borrow from the Brooklyn Rapid Transit Company on demand notes. Each company then makes a certificate of indebtedness in favor of the Brooklyn Rapid Transit Company covering the total of the expenditures made during the month and sells the certificate of indebtedness at the face value for cash to the Brooklyn Rapid Transit Company. These certificates of indebtedness are transmitted by the Brooklyn Rapid Transit Company to the trustee under the mortgage accompanied by an application to the trustee to authenticate and deliver bonds equal to the face value of the certificates so deposited. The trustee delivers the bonds as requested. The company depends upon the sale of these bonds to reimburse itself for improvements which it has financed and markets them from time to time at the best prices obtainable.

#### OPINION OF COMMISSION.

(Adopted July 17, 1908.)

#### COMMISSIONER McCARROLL:—

These proceedings come before the Commission upon the request for consent of the Commission under Railroad Law, section 4, subdivision 10, to the issuing of mortgages as follows:

(1) By the Nassau Electric Railroad Company of a mortgage to the Central Trust Company as trustee, bearing date March 29, 1907, to secure \$5,000,000 of demand certificates issued and to be issued by said Nassau Company, bearing 6 per cent interest, proceeds being applied to improvement of the property of the Nassau Company; the petition is verified June 12, 1907, and was presented to the late Board of Railroad Commissioners.

(2) By the Brooklyn Union Elevated Railroad Company of a mortgage to the Central Trust Company as trustee, bearing date March 29, 1907, to secure \$20,000,000 of demand certificates of that company issued and to be issued, bearing 6 per cent interest, proceeds being applied to payment of debts of said company and the improvement of its property; this petition is verified June 12, 1907, and was presented to the late Board of Railroad Commissioners.

The proposed mortgages were submitted with the petitions to the late Board of Railroad Commissioners; the applications were not acted upon by that Board, and by the operation of the Public Service Commissions Law the proceedings have been continued and hearings had before this Commission. The Brooklyn Rapid Transit Company by Exhibit No. 4, in evidence August 14, 1907, in the investigation by this Commission of the Interborough-Metropolitan Company and the Brooklyn Rapid Transit Company, was shown to be the holder of securities of the two companies herein as follows:

SECURITIES OUTSTANDING.		Brooklyn Rapid Transit. Co. holds.
The Nassau Electric Railroad Co.:	Amount issued.	
Common stock .....	\$8,500,000 00	\$8,490,700 00
Preferred stock .....	6,500,000 00	6,367,075 00
Bonds .....	15,000,040 00	379,000 00
Certificates of indebtedness.....	3,129,808 89	3,129,808 89
Brooklyn Union Elevated Railroad Co.:		
Common stock .....	13,000,000 00	12,530,030 63
Preferred stock .....	5,000,000 00	4,785,485 39
Bonds .....	23,000,000 00	
Certificates of indebtedness.....	7,206,802 21	7,206,802 21

It appears from the proposed mortgages which, upon these applications, the Commission is asked to approve, and from other information herein, that the Brooklyn Rapid Transit Company, on or about July 1, 1902, executed to the Central Trust Company, as trustee, its 100-year mortgage to secure \$150,000,000 of its bonds, and that in connection with the mortgages, which the Commission is now asked to approve, the Brooklyn Rapid Transit Company, the Nassau Electric and the Brooklyn Union have entered into an agreement of even date, which is recited in the mortgages, by the terms of which demand certificates, to be secured by these mortgages, have been issued by Nassau Electric to the amount of \$716,489.14 and by the Brooklyn Union to the amount of \$207,169.74, both of which amounts of these certificates have been already taken by the Brooklyn Rapid Transit, and that the total amount already issued and to be issued of these demand certificates by the Nassau Electric is \$5,000,000 and by the Brooklyn Union is \$20,000,000; that the Nassau Electric and the Brooklyn Union undertake to sell the entire issue of their certificates to the Brooklyn Rapid Transit, and the latter company undertakes to purchase the same at any time within ten years, the purchase price of each such certificate to be the principal amount thereof; that the Brooklyn Rapid Transit is then to deliver the demand certificates so taken to the Central Trust Company and receive from that Trust Company authentication and delivery to it of 100-year bonds of the Brooklyn Rapid Transit Company secured by its \$150,000,000 mortgage, above mentioned, the principal amount of which are not to be greater than the demand certificates of the Nassau Company and the Brooklyn Union Elevated Company so delivered to it.

The control of this Commission, under section 55 of the Public Service Commissions Law, does not extend to the issuing of notes or evidences of indebtedness payable at periods of not more than twelve months after their date. It seems to me that the issuing of demand certificates, if secured by the mortgages above mentioned and the pledging of such certificates as security for the issuing of 100-year bonds of the Brooklyn Rapid Transit Company, is an evasion of the provisions of section 55 of the Public Service Commissions Law, and that as it is the duty of the Commission to carry out the provisions of that law, according to their true intent, and to supervise the capitalization of all public service corporations subject to its jurisdiction, the Commission should refuse its consent to these mortgages. The plan of mortgaging a street railroad to secure demand certificates and pledging the same for long time bonds may easily be availed of to nullify or seriously impair the power of the Commission to supervise the capitalization of public service corporations.

Thereupon Final Orders Nos. 642 and 643 were issued.

In the Matter  
of the

Application of the BROOKLYN UNION ELEVATED  
RAILROAD COMPANY for consent to an issuance  
by said company of a mortgage to the amount  
of \$20,000,000.

ORDER No. 643,  
July 17, 1908.

An application having been made to the former Board of Railroad Commissioners by the Brooklyn Union Elevated Railroad Company for the consent of the said Board to the issuance by said Brooklyn Union Elevated Railroad Company of a mortgage of said company to secure \$20,000,000 demand certificates of said Brooklyn Union Elevated Railroad Company issued and to be issued by said company by a petition verified June 12, 1907, and brought on for hearing before said Board of Railroad Commissioners on June 18, 1907, and June 25, 1907, T. S. Williams, Esq., appearing for the said applicant and Mr. Judson B. Wall, in opposition, and the same being pending before the said Board of Railroad Commissioners undetermined upon the abolition of said Board of Railroad Commissioners by chapter 429 of the Laws of 1907, known as the Public Service Commissions Law, and the said application having been continued in pursuance of the said Public Service Commissions Law and coming on for hearing and being heard by the Commission on September 5, September 12, September 19, and September 26, 1907, Mr. Commissioner Bassett presiding. George D. Yeomans, Esq., appearing for the said applicant, and testimony and proofs on behalf of the said applicant having been presented, and the Commission having considered the same and arguments of counsel in favor of the said application, and being fully advised in the premises, it is now hereby

*Ordered*, That said application be and the same hereby is denied, and that the consent of the Public Service Commission for the First District to the issuance of said mortgage by the said Brooklyn Union Elevated Railroad Company be and such consent hereby is refused.

In the Matter  
of the  
Application of the NASSAU ELECTRIC RAILROAD  
COMPANY for consent to an issuance by said  
company of a mortgage to the amount of  
\$5,000,000.

ORDER No. 642.  
July 17, 1908.

An application having been made to the former Board of Railroad Commissioners by the Nassau Electric Railroad Company for the consent of the said Board to the issuance by said Nassau Electric Railroad Company of a mortgage of said company to secure \$5,000,000 demand certificates of said Nassau Electric Railroad Company issued and to be issued by said company, by a petition verified June 12, 1907, and brought on for hearing before said Board of Railroad Commissioners on June 18, 1907, T. S. Williams, Esq., appearing for the said applicant, and the same being pending before the said Board of Railroad Commissioners undetermined upon the abolition of said Board of Railroad Commissioners by chapter 429 of the Laws of 1907, known as the Public Service Commissions Law, and the said application having been continued in pursuance of the said Public Service Commissions Law and coming on for hearing and being heard by the Commission on September 5, September 12, September 19 and September 26, 1907, Mr. Commissioner Bassett presiding, George D. Yeomans, Esq., appearing for the said applicant, and the testimony and proofs on behalf of the said applicant having been presented, and the Commission having considered the same and the arguments of counsel in favor of said application, and being fully advised in the premises, it is now hereby

*Ordered*, That said application be and the same hereby is denied, and that the consent of the Public Service Commission for the First District to the issuance of said mortgage by the said Nassau Electric Railroad Company be and such consent hereby is refused.

**Brooklyn Union Gas Company.**—Application for authority to issue \$3,000,000 of capital stock for the purpose of converting debentures into capital stock.

Opinion of Counsel.  
Hearing Order No. 627.  
Opinion of Commissioner Eustis.  
Final Order No. 640.

OPINION OF COUNSEL.

June 30, 1908.

*Public Service Commission for the First District:*

SIRS.—I am in receipt of the Secretary's letter, bearing date June 26, transmitting copy of a communication from James Jourdan, President of the Brooklyn Union Gas Company, in reference to certain convertible debentures of that company.

It appears from that letter that the Brooklyn Union Gas Company in 1903 claims to have increased its capital stock from \$15,000,000 to \$20,000,000 and resolved that an issue of \$3,000,000 of debentures be issued, convertible into \$3,000,000 of stock of the company upon any interest day or payable in cash on the expiration of five years from March 1, 1904. It states that the company is advised by its attorneys that it is not necessary to apply to the Public Service Commission for approval of the issue of \$3,000,000 of its capital stock to convert these debentures, on the ground that the debentures, valid when made, obligate the company to issue its shares and that the Public Service Commissions Law is not retroactive and does not affect and cannot repair the obligation of contracts pre-existing the law.

It may be true that in a proper case where contracts legally made have created obligations which have become fixed prior to the Public Service Commissions Law, that law should not be deemed to affect the same, but in my opinion the carrying out of such contracts in so far as they require the issue of new stock and new bonds of the gas company, is subject to the supervision and regulation of the Commission, in the public interest. It cannot be thought that the Legislature deemed it in the public interest that parties to such pre-existing contracts should assume to themselves sole authority to decide what the rights and

privileges of the parties thereto are in the premises, and I am of the opinion that such contracts and the acts of the company and others, which tend to fix definitely the rights and obligations of the parties, should be submitted to the Commission and its authority obtained for the issue of the stock, in accordance with the obligations of the contract and the law.

It is to be assumed that in such cases the Commission will see that the rights of holders of securities of the company are properly secured to them and that the rights of the company and the public are properly protected.

In my opinion, therefore, the company should make application to the Commission for permission and authority to issue the stock, under the provisions of section 69 of the Public Service Commissions Law.

Respectfully yours,  
(Signed.) GEORGE S. COLEMAN,  
*Counsel to the Commission.*

In the Matter  
of the

**Application of the BROOKLYN UNION GAS COMPANY** for the consent and approval of the issue of \$3,000,000 par value of its capital stock for the purpose of converting convertible debentures of said Company heretofore issued.

**HEARING ORDER No. 627**  
**July 7, 1908.**

Whereas the Public Service Commission for the First District has received the petition of the Brooklyn Union Gas Company, verified July 6, 1908, praying the consent and approval of the Commission to the issuance of \$3,000,000 par value of the capital stock of the said company for the purpose of converting convertible debentures of said company heretofore issued into said stock on the basis of one share of stock for each one hundred dollars, par value, of debentures,

*Resolved.* That the said petition of the said Brooklyn Union Gas Company be heard by and before the Public Service Commission for the First District on Monday, the 13th day of July, 1908, at 10:30 o'clock in the forenoon, and that the said company publish a notice of the said application, and of the time and place of the said hearing in the following newspapers, namely: Brooklyn Eagle, Evening Post, New York Times, published in the city of New York, State of New York, on at least three separate days before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of said hearing.

Hearing held July 13th.

\* [Even though before the passage of the Public Service Commissions Law a gas company had entered into a contract with its stockholders for the issue of stock in exchange for convertible debentures, nevertheless such company must obtain from the Commission an order authorizing the issue.]

In 1904 the Brooklyn Union Gas Company sold to its stockholders convertible debentures at par to the amount of \$3,000,000 pursuant to the following resolution:  
"Whereas, The stockholders, at a meeting held on the 30th day of December, 1903, having approved and authorized the proposed increase of capital stock and the proposed issue of Convertible Debentures, in accordance with the plan set forth in the circular to stockholders dated December 10, 1903; it is therefore

"Resolved, That this company hereby offers to the stockholders of record on January 18th, 1904, or their assigns, at the par value thereof, Convertible Debentures aggregating \$3,000,000 in denominations of \$1,000 or \$500 each, bearing interest at the rate of 6 per cent per annum, payable semi-annually on the first days of September and March in each year and convertible, at the option of the holder, into Capital Stock of the Company, on the basis of one share of stock for each \$100 par value of Debentures, on and after three years from the date of issue of the said Debentures, on any date when the coupon falls due, if surrendered with unmatured coupons attached. Such Debentures as may not be surrendered for conversion into stock on or before March 1, 1909, shall mature on that date and be redeemed in cash at face value without interest thereafter. Each stockholder shall be entitled to subscribe for Convertible Debentures to the amount of twenty per cent of the par value of the shares standing in his name at the closing of the books. Subscription must be made and amount thereof paid not later than March 1st, 1904, but payment may be made at any time during the month of February, 1904, and interest at the rate of 6 per cent per annum will be allowed to the first day of March, 1904. Debentures not subscribed for on March 1st, 1904, will be disposed of as the Board of Directors may determine.

"Resolved, That Debentures be issued in denominations of \$1,000 and \$500 only, but stockholders entitled to subscribe for a fractional part of a Debenture, may subscribe therefor and will receive from the Guaranty Trust Company of New York, on payment of the amount due on or before March 1st, 1904, scrip representing each fractional part, upon which no interest will be paid, but upon presentation of scrip certificates in amounts of five hundred dollars, or multiples thereof, on or prior to March 1st, 1909. Debentures, with coupons maturing September 1st, 1904, and thereafter, will be delivered for the same. Any scrip presented after March 1st, 1909, will be paid for in cash at face value without interest."

The stockholders had not at the time of the hearing elected to take stock in exchange for the debentures, but the officials believed they would make such election. They desired if the stockholders did not so elect to be allowed to use stock so as to pay the holders of the debentures from the proceeds of the sale.

\* See footnote, page 9.

## 116 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

### OPINION OF COMMISSION.

(Adopted July 17, 1908.)

#### COMMISSIONER EUSTIS:—

The Brooklyn Union Gas Company in 1904 sold at par \$3,000,000 6 per cent debentures which, by their terms, are convertible after three years, upon any interest day, into stock of the company upon the basis of one share of stock for each \$100, face value, of debentures, and if not so converted the debentures become due for payment March 1, 1909.

The company, at the time of the issue, increased its authorized capital stock from \$15,000,000 to \$20,000,000 for the purpose of issuing the necessary new stock to make this conversion, and has lately made to this Commission the suggestion that inasmuch as contract rights and the obligations to issue this stock had become fixed prior to the enactment of the Public Service Commissions Law, the necessary stock could be issued by the company without application to or approval of the Commission.

The counsel to the Commission, on the question being submitted to him, advised the Commission that it was not to be thought that the Legislature deemed it in the public interest that parties to such pre-existing contracts should assume to themselves authority to decide what the rights and privileges of the parties thereto are in the premises, and that in his opinion such contracts, and the acts of the company and others which tend to fix definitely the rights and obligations of the parties, should be submitted to the Commission and its authority obtained for the issue of the stock in accordance with the obligations of the contract and the law. He added that it was to be assumed that in such cases the Commission would see that the rights of holders of securities of the company were properly secured to them, and that the rights of the company and of the public were properly protected.

The Brooklyn Union Gas Company has therefore made application for an order authorizing the issue of \$3,000,000 of stock for the purpose of making the conversion of these debentures, either upon September 1st, the interest day, or March 1st, the date of the maturity of the debentures.

I am of the opinion that this is a lawful refunding of obligations of the company as the words are used in section 55 of the Public Service Commissions Law, and I accordingly advise the granting by the Commission of the authority for the issue of this \$3,000,000 of stock, the same to be used only for the purpose of converting the outstanding debentures to the same amount.

Thereupon the following final order was issued:

### FINAL ORDER No. 640.

July 17, 1908.

Whereas, the Brooklyn Union Gas Company filed with the Public Service Commission for the First District its petition verified July 6, 1908, praying the consent and approval of the Commission to the issuance by it of 30,000 shares, being \$3,000,000 par value of the capital stock of the said company; and

Whereas, the purpose for which said stock is proposed to be issued is the converting and refunding of obligations of said Brooklyn Union Gas Company, consisting of \$3,000,000 face value of debentures of the said Brooklyn Union Gas Company, issued and bearing date March 1, 1904, at 6 per cent interest, coupons payable March 1st and September 1st, and convertible upon any interest day into stock of said company upon the basis of one share of stock for each \$100 of par value of such debentures; and

Whereas the Public Service Commission for the First District did thereupon by its order No. 627, adopted July 7, 1908, direct the said petition to be heard on Monday, July 13, 1908, at 10:30 o'clock in the forenoon, and that the petitioner publish a notice of said application and of the time and place of said hearing in the manner and as provided in said order, and the petitioner did thereupon cause notice of said application and of the time and place of said hearing to be published in pursuance of said order and did file proof thereof with the Secretary of the said Commission before the opening of said hearing, and the matter coming on to be heard on said July 13, 1908, at 10:30 o'clock in the forenoon, Mr. Commissioner Eustis presiding upon said hearing, and said petitioner having duly appeared by William N. Dykman, Esq., as counsel, and no one appearing in opposition, and the petitioner having submitted proofs in support of said application, and the Commission having taken testimony and having examined witnesses and records of the petitioner, and being fully advised in the premises;

It being now the opinion of the Commission that the use of the capital to be secured by the issue of said stock by the said Brooklyn Union Gas Company is reasonably required for the discharge or lawful refunding of its obligations, it is hereby

*Ordered*, That the Public Service Commission for the First District does hereby authorize, subject to the conditions hereinafter set forth, the issue by the petitioner, Brooklyn Union Gas Company, of 30,000 shares, being \$3,000,000 face value of stock of the said Brooklyn Union Gas Company, said issue to be upon the conditions and for the purposes following and not otherwise, to wit:

The said shares of stock shall be issued only upon September 1, 1908, or March 1, 1909, and for each such share so issued of said stock of the par value of \$100 there shall be delivered to and received by said Brooklyn Union Gas Company \$100 par value of the said debentures of the said company with unmatured coupons, if any. And it is further

*Ordered*, That this order shall take effect on the 17th day of July, 1908, and shall continue in force until and including March 1, 1909. And it is further

*Ordered*, That within five (5) days after the service upon the said Brooklyn Union Gas Company of this order the said company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### Coney Island and Brooklyn Railroad Company.—Application for authority to issue \$30,000 of bonds.

Hearing Order No. 233.  
Opinion of Commissioner Bassett.  
Final Order No. 273.

ORDER No. 233.  
January 31, 1908.

Whereas the Commission has received the petition of the Coney Island and Brooklyn Railroad Company, verified January 22, 1908, for an order authorizing an issue of bonds of said company, of the par value of thirty thousand dollars (\$30,000), in payment of new cars, as in said petition set forth;

*Resolved*, That the said petition of the said Coney Island and Brooklyn Railroad Company be heard by and before the Public Service Commission for the First District on the 6th day of February, 1908, at 2:30 o'clock in the afternoon, and that said company publish a notice of the said application and of the time and place of the said hearing in the following newspaper, published in the Borough of Brooklyn, city of New York, at least two days in succession before said hearing and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing:

The Brooklyn Daily Eagle.

Hearing held February 6th.

#### OPINION OF COMMISSION.

(Adopted February 18, 1908.)

#### COMMISSIONER BASSETT:

The company was required by an order of the Commission to obtain ten new cars, with trucks and motors, complete, for use on its Smith street line. These cars are now practically ready for use, and will cost, so the officials of the company testify, \$43,000. Our expert estimates them to cost not less than \$36,000. The company has certain 4 per cent bonds prepared, and would sell some of these to raise the money to pay, but present market conditions prevent. It has not sufficient funds to pay for the cars, although it has a considerable amount of cash on hand, which has been raised by a special issue of stock, but its use is restricted to the erection of a new power plant. It therefore proposes to have the Brooklyn Trust Company act as trustee, under an agreement for the purchase by said trustee of the new cars. The company will then prepare and issue \$30,000 of 6 per cent gold car trust bonds, in denomination of \$1,000 each, the interest being payable semi-annually and the principal in five annual installments of \$6,000 each, beginning August 1, 1910. The Brooklyn Trust Company will remain trustee for the bondholders. The contract entered into between the company and the trustee provides that the trustee shall sell the bonds at not less than par, and out of the proceeds pay \$30,000 of the cost price of the cars. A provision is inserted in said contract that the payments as heretofore stated to be made by the company to the trustee shall be considered rent. When, however, the entire amount of \$30,000 principal and the interest thereon has been paid by the company to the trustee the

title of the ten cars will vest in the company. The contract further provides that the cars shall be marked "Brooklyn Trust Company, Lessor," and arranges a method of substitution in case of their destruction while in the possession of the operating company. In case the company shall make default in payments or fail to keep the cars in good serviceable condition, or to perform any of the other covenants in the contract contained, then the trustee may declare the agreement terminated and all installments of rent shall become due and payable, and the trustee may enter upon the premises of the railroad and retake the said cars.

It will be seen that the proposed bonds do not constitute a lien upon the assets of the company, nor are they secured by any mortgage thereon. They refer to these ten cars only. It is true that in case of default the bondholders could take and sell the cars and hold the company responsible for any deficiency. This method amounts to the purchase of the cars on the installment plan, and entitles the company to the cars on the completion of the payment of all installments and interest. The bond issue is for less than the cost of the cars, and the company will pay the balance for the cars from its earnings.

Under the circumstances I am of the opinion that it is right to consent to this bond issue. If the bonds sell for more than par the proceeds should go to the applicant company and not to the trustee. In granting this consent the Commission does not pass upon the amount paid by the company for these ten cars above \$30,000. It is to be assumed that the company pays a sufficient amount of its earnings to make up the total actual cost, and no more.

The applicant company has not yet fully complied with the requirements of this Commission in furnishing certified copies of its corporate and franchise papers. It offers as an excuse for this that their preparation and comparison involve more time than its officers at first thought would be necessary, and that they are preparing those not already furnished and will shortly file them in this office. I would consider that entire compliance with the Commission's order in this respect would be a necessary prerequisite to the granting of this consent if the bonds involved a lien on all or a substantial part of the company's property, but as the bonds affect only the ten new cars, which are badly needed for the public service, I recommend that this consent be granted without delay. My opinion is that the issue of these bonds for this purpose is reasonably requisite.

Thereupon the following final order was issued:

In the Matter of the Application of the CONEY ISLAND AND BROOK- LYN RAILROAD COMPANY for the approval of an issue of bonds of the par value of \$30,000 to be issued for the purchase of ten (10) new cars.	ORDER No. 273. February 18, 1908.
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This application of the Coney Island & Brooklyn Railroad Company for an order of this Commission under section 55 of the Public Service Commissions Law, authorizing an issue of bonds by [REDACTED] company to the amount of \$30,000, the proceeds to be used toward the purchase and payment for ten (10) new cars, estimated to cost \$43,000, as more fully set forth in the petition filed by the said company January 22, 1908, came on to be heard on the 6th day of February, 1908, at 2:30 o'clock in the afternoon, Mr. Commissioner Bassett presiding, upon the petition of said company filed as aforesaid for such order, verified the 22d day of January, 1908, pursuant to an order and resolution of this Commission adopted January 31, 1908, the same being Order No. 233, which appointed the 6th day of February, 1908, at 2:30 o'clock in the afternoon, at the office of the Commission, as the time and place of hearing said application, and further directed that the said company publish a notice of the time and place of such hearing in the Brooklyn Daily Eagle at least two days in succession before said hearing, and file proof of said publication with the Secretary of the Commission on or before the opening of such hearing.

The Coney Island & Brooklyn Railroad Company, at the opening of the said hearing, duly filed proof of the publication of said notice in the Brooklyn Daily Eagle aforesaid, in accordance with said order for hearing, and the following appearances were noted: William N. Dykman, Esq., for the Coney Island & Brooklyn Railroad Company, said petitioner, and Oliver C. Semple, Esq., assistant counsel, for the Commission.

Now, upon the petition and the evidence, arguments of counsel and the report of Mr. Commissioner Bassett, it appearing to the Commission after said hearing

that the said applicant, Coney Island & Brooklyn Railroad Company, has ordered ten (10) new car bodies each with double fifty horse power equipment complete and each with new trucks for use on its Smith street line, at an estimated cost and of the value of \$43,000 to meet an increase of service and equipment ordered by this Commission by an Order No. 60 issued October 30, 1907, and that said company asks leave to issue and sell at par its bonds to the amount of \$30,000, at 6 per cent interest semi-annually, the principal payable in five installments of \$6,000 each, the first of said installments payable August 1, 1910, and like installments annually thereafter, the proceeds of said bonds to be used toward payment for the cars aforesaid under a proposed car trust agreement between said Coney Island & Brooklyn Railroad Company and the Brooklyn Trust Company, as trustee, by the terms of which, among other things, it is provided that the title to the said cars is to remain in the trustee until the last installment of the principal sum of the said \$30,000 shall have been paid to the trustee, and it further so appearing and it being now the opinion of the Commission that the use of the capital to be secured by the issue of the said bonds is reasonably required for the acquisition of said property and the improvement of the facilities of the said company and for the improvement and maintenance of its service;

Therefore, it is Ordered, That the said issue of bonds of and by the Coney Island & Brooklyn Railroad Company in the amount of \$30,000 be and the same hereby is authorized, the same to draw 6 per cent interest and be payable in annual installments of \$6,000 each on August 1, 1910, August 1, 1911, August 1, 1912, August 1, 1913, and August 1, 1914, and said bonds to be sold at not less than par and the entire proceeds thereof to be used and applied to the purposes and in the manner following and not otherwise, to wit: Toward payment for ten (10) new cars already ordered by the said company for use on its railroad and under the terms of a car trust agreement between said Coney Island & Brooklyn Railroad Company and the Brooklyn Trust Company, as trustee, said contract to be in substance as proposed in and made part of said application and annexed to said petition of said company filed herein.

**Coney Island and Brooklyn Railroad Company.—Application  
for authority to issue additional bonds.**

In the Matter  
of

Application of THE CONEY ISLAND & BROOKLYN  
RAILROAD COMPANY for authority to issue an  
additional amount of bonds in the sum of \$462,000.

ORDER No. 420.  
April 17, 1908.

Whereas the Public Service Commission for the First District has received the petition of The Coney Island & Brooklyn Railroad Company, verified the 8th day of April, 1908, praying,

That the Commission will consent to and approve of an additional issue of bonds secured by the petitioner's consolidated mortgage, dated December 15, 1904, beyond the amount of five million five hundred thousand dollars, to wit: four hundred sixty-two thousand dollars (\$462,000), for the following uses:

1. To pay two hundred seventy-eight thousand dollars (\$278,000), the estimated cost of the reconstruction of the railroad on Coney Island Avenue from Prospect Park to Coney Island;
2. To pay sixteen thousand dollars (\$16,000), the balance of the cost of ten new cars ordered by this Commission over thirty thousand dollars (\$30,000), the par value of authorized car trust bonds; and
3. To pay eighty-two thousand nine hundred seventy-three dollars (\$82,973), the balance of the cost of reconstruction of petitioner's power system over the moneys raised therefor by sale of stock;

Resolved, That the said petition of said The Coney Island & Brooklyn Railroad Company be heard by and before the Public Service Commission for the First District on the 4th day of May, 1908, at 2:30 o'clock in the afternoon, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers, namely: The Brooklyn Times and the Brooklyn Citizen, published in the borough of Brooklyn, in the city of New York at least three days in succession before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

The notice referred to in the above resolution is as follows:

*Notice is hereby given, That an application and petition of The Coney Island & Brooklyn Railroad Company to the Public Service Commission for the First District, has been made, praying,*

That the Commission will consent to and approve of an additional issue of bonds secured by the petitioner's consolidated mortgage, dated December 15, 1904;

120 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

beyond the amount of five million five hundred thousand dollars, to wit: four hundred sixty-two thousand dollars (\$462,000), for the following uses:

1. To pay two hundred and seventy-eight thousand dollars (\$278,000), the estimated cost of the reconstruction of the railroad on Coney Island Avenue from Prospect Park to Coney Island;

2. To pay sixteen thousand dollars (\$16,000), the balance of the cost of ten new cars ordered by this Commission over thirty thousand dollars (\$30,000), the par value of authorized car trust bonds; and

3. To pay eighty-two thousand nine hundred and seventy-three (\$82,973), the balance of the cost of reconstruction of petitioner's power system over the moneys raised therefor by sale of stock.

And that said application and petition will be heard by the said Commission at its office, No. 154 Nassau street, borrough of Manhattan, city of New York, on 1908, at o'clock in the noon.

Dated New York, April , 1908.

THE CONEY ISLAND & BROOKLYN RAILROAD COMPANY.  
By.....

Hearings held May 4th, 25th, June 15th, 25th, September 15th, October 15th and December 10th.

**Interborough Rapid Transit Company.—Application for authority to issue a mortgage of \$55,000,000.**

Hearing Order No. 315.  
Opinion of Chairman Wilcox.  
Final Order No. 438.  
Final Order No. 445.

In the Matter  
of  
Application of the INTERBOROUGH RAPID TRANSIT COMPANY for authority to execute a mortgage on all its property to secure the issue of bonds, not to exceed in face value, \$55,000,000.

ORDER No. 315.  
March 6, 1908.

Whereas the Public Service Commission for the First District has received the petition of the Interborough Rapid Transit Company, verified the 4th day of March, 1908, praying,

1. That the Commission approve the execution by said company of a mortgage of all of its real estate and all of its interests as lessee of rapid transit railroads and other property described in said proposed mortgage, a form of which mortgage is submitted with said petition to secure an issue of not to exceed fifty-five million dollars (\$55,000,000), face value of its forty-five year gold mortgage bonds, to be dated as of November 1, 1907, payable November 1, 1952.

2. That authority be given to it by the Commission to issue immediately the following amounts of said bonds, namely: eighteen million dollars (\$18,000,000), face value of said bonds, for the purpose of refunding or securing the extension of fifteen million dollars (\$15,000,000), face value gold notes of said company maturing May 1, 1908; twelve million dollars (\$12,000,000), face value of said bonds, for the purpose of refunding or discharging its present outstanding indebtedness (other than its gold notes) and of providing funds for its immediate needs.

3. That authority be given to it by the Commission to issue its promissory notes to an amount not exceeding twenty-five million dollars (\$25,000,000), to be dated May 1, 1908, payable at not exceeding three years from date, with interest semi-annually not exceeding 6 per cent per annum, and to secure the said extended notes by the pledge of not exceeding thirty million dollars (\$30,000,000), face value of the said proposed new mortgage bonds.

4. The consent of the said Commission, as successor to the Board of Rapid Transit Railroad Commissioners in the city of New York, and pursuant to the terms of the contracts for the construction, maintenance and operation of said rapid transit railroads, to the said mortgage of the leases of the rapid transit railroads from the city of New York assigned to said petitioner.

*Resolved*, That the said petition of the said Interborough Rapid Transit Company be heard by and before the Public Service Commission for the First District on Monday, March 16, 1908, at 2:30 o'clock in the afternoon, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers, namely: New York Herald, and Mail and Express, published in the borrough of Manhattan, in the city of New York, at least three days in succession before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

The notice referred to in the above resolution is as follows:

*Notice is hereby given*, That an application and petition of the Interborough Rapid Transit Company to the Public Service Commission for the First District, has been made, praying,

1. That the Commission approve the execution by said company of a mortgage of all of its real estate and all of its interests as lessee of rapid transit railroads and other property described in said proposed mortgage, a form of which mortgage is submitted with said petition to secure an issue of not to exceed fifty-five million dollars (\$55,000,000), face value of its forty-five-year gold mortgage bonds, to be dated as of November 1, 1907, payable November 1, 1952.

2. That authority be given to it by the Commission to issue immediately the following amounts of said bonds, namely: eighteen million dollars (\$18,000,000), face value of said bonds, for the purpose of refunding or securing the extension of fifteen million dollars (\$15,000,000) face value gold notes of said company maturing May 1, 1908; twelve million dollars (\$12,000,000), face value of said bonds, for the purpose of refunding or discharging its present outstanding indebtedness (other than its gold notes) and of providing funds for its immediate needs.

3. That authority be given to it by the Commission to issue its promissory notes to an amount not exceeding twenty-five million dollars (\$25,000,000), to be dated May 1, 1908, payable at not exceeding three years from date, with interest semi-annually not exceeding 6 per cent per annum, and to secure the said extended notes by the pledge of not exceeding thirty million dollars (\$30,000,000) face value of the said proposed new mortgage bonds.

4. The consent of the said Commission, as successor to the Board of Rapid Transit Railroad Commissioners in the city of New York, and pursuant to the terms of the contracts for the construction, maintenance and operation of said rapid transit railroads, to the said mortgage of the leases of the rapid transit railroads from the city of New York assigned to said petitioner.

And that said application and petition will be heard by the said Commission at its office, No. 154 Nassau street, borough of Manhattan, New York City, on Monday, March 16, 1908, at 2:30 o'clock in the afternoon.

Dated, New York, March , 1908.

INTERBOROUGH RAPID TRANSIT COMPANY,

By .....

Hearings held March 16th, 23d, 30th, April 6th, 7th, 16th, 22d, 23d and 27th.

The Interborough Rapid Transit Railroad Company is a railroad corporation which leases the present subway from the city of New York and also leases all the elevated railroads in Manhattan and the Bronx, owns stocks and bonds of various other companies, the subway equipment and other property.

The mortgage approved by the Commission provided for the issue of bonds as follows:

Fifteen million dollars of bonds and such further sum as the company may prescribe, not exceeding in the aggregate \$18,000,000, shall be reserved for the purpose of retiring the \$15,000,000 4 per cent three-year gold notes maturing May 1, 1908, referred to in the report.

Ten million dollars of bonds and such further sum as the company may prescribe, not exceeding \$12,000,000, shall be reserved for the purpose of retiring the 5 per cent three-year gold notes of the company maturing March 1, 1910.

Every agreement under which the \$25,000,000 of notes of the company authorized by the Commission shall be issued secured by the pledge bonds issued under this mortgage shall in substance provide that whenever any of the notes secured by such agreement shall be tendered by the holder to the trustee for exchange, the trustee at the request of the company shall receive the notes tendered and deliver and exchange therefor pledged bonds at the rate of \$100 face value of pledged bonds for every \$98 face value of notes. All bonds not appropriated for the purpose of retiring the \$25,000,000 of notes mentioned shall be issued only for one of the following purposes:

For making additions or improvements to and equipment for the subway now existing or hereafter constructed, which at the time of the issue of the bonds shall be owned by or leased to the company or owned by or leased to a corporation not less than 90 per cent of whose stock shall be owned by the company, or to fund or refund the indebtedness of the company existing on April 1, 1908, or thereafter contracted for these purposes.

To retire, fund or refund the indebtedness of any other corporation assumed or guaranteed by the company, provided that the company owned at the time of the assumption of the indebtedness 90 per cent of the stock of such corporation.

The company agreed to "keep true and correct accounts showing the application by it of the proceeds of the sale of all bonds issued hereunder, and showing also the receipt and the application by it of the proceeds of the sale of all property at any time subject to the lien of this indenture which may be sold free from the lien hereof as herein provided, and which accounts, as well as the transcripts of accounts furnished by the trustee pursuant to the provisions of section 7 of article two hereof, shall at all reasonable times be subject to inspection by the holders of any bonds at any time outstanding secured hereby as well as by the Public Service Commission for the First District. And such accounts shall be

audited from time to time by an impartial accountant or accountants appointed for such purpose by said Public Service Commission, and a copy of the accounts as so audited shall be at all reasonable times subject to the inspection of holders of any bonds at any time outstanding secured hereby. Said accounts shall specifically show the amounts received by the company from time to time upon the sale of bonds secured hereby, or of notes collaterally secured by bonds issued hereunder."

The trust agreement between the Interborough Rapid Transit Company and the Morton Trust Company, trustee, referred to in the report and order by which \$30,000,000 of bonds was pledged to secure \$25,000,000 of gold notes, provides that the notes authorized to be issued pursuant to that agreement and the proceeds thereof shall be used for the discharge or refunding of the \$15,000,000 face value 6 per cent three-year gold notes of the company maturing May 1, 1908, certain other promissory notes aggregating \$6,250,000 and of its indebtedness incurred to pay obligations incurred for the acquisition of property and improvement of its facilities and service. At the option of the holder each note shall be exchangeable for pledged bonds on any interest day not later than November 1, 1910, at the rate of \$90 in collateral notes for \$100 in pledged bonds.

OPINION OF COMMISSION.

(Adopted April 23, 1908.)

CHAIRMAN WILLCOX:—

The petitioner is a railroad corporation duly incorporated under the Railroad Law, pursuant to the provisions of chapter 544 of the Laws of 1902, being an act entitled "An act to amend chapter four of the Laws of eighteen hundred and ninety-one, entitled 'An act to provide for rapid transit railways in cities of over one million inhabitants.'" The incorporation of the petitioner was duly approved by the Board of Rapid Transit Railroad Commissioners in and for the city of New York, pursuant to the provisions of the said statute and the amendments thereof, and the company was organized for the purpose of undertaking the construction and operation (including the equipment thereof) of a rapid transit railroad in the city of New York, then in process of construction under contract theretofore made between the said city, by the Board of Rapid Transit Commissioners, and one John B. McDonald, dated February 21, 1900, pursuant to the provisions of said chapter 4 of the Laws of 1891 and the amendments thereof.

The petitioner is the lessee of, and is now operating, the lines of "Subway" railroad, extending from the City Hall in the borough of Manhattan northwardly to 104th Street and Broadway, and thence dividing into two lines, one running north on the west side of Kingsbridge, the other running easterly to Bronx Park, as well as the Subway running southerly from the City Hall in Manhattan to the Battery and thence to the Long Island Railroad station at Flatbush and Atlantic avenues, in the borough of Brooklyn, which latter line is now in operation between the City Hall in the borough of Manhattan and the Borough Hall in the borough of Brooklyn.

The petitioner is also engaged in the operation of the entire elevated railroad system in the boroughs of Manhattan and The Bronx belonging to the Manhattan Railway Company, under lease to it duly executed by the said Manhattan Railway Company dated January 1, 1903.

The petitioner requested authority to execute a mortgage of all of its real estate and all of its interest as lessee of the rapid transit railroads above referred to, derived by assignment from John B. McDonald and the Rapid Transit Subway Construction Company, respectively, and the other property described in its proposed mortgage, a tentative form of which was submitted with its petition.

The purpose of the proposed mortgage was to secure an issue of not to exceed \$55,000,000 face value of the company's 45-year gold mortgage bonds, to be dated as of November 1, 1907, to be payable November 1, 1952, with interest at a rate to be fixed by the board of directors of the company from time to time, payable semi-annually on the 1st days of May and November in each year, both principal and interest to be payable in United States gold coin without deduction for tax, such bonds to be entitled to the benefit of and to be subject to purchase at 110 per cent and accrued interest through the operations of a sinking fund of \$300,000 per annum, beginning November 1, 1910. The petitioner further requested that the said bonds be subject to payment and cancellation at its option, on any interest day, in amounts not less than \$1,000,000 face value, at 110 per cent and accrued interest.

The petitioner then proceeded to set out the financial condition of the petitioner, its outstanding capital stock, the amount of dividends heretofore declared by it, its outstanding indebtedness, funded and unfunded, together with accounts payable to reimburse operating and income accounts for expenditures for capital purposes, aggregating \$35,352,726.11.

The petitioner proved that in addition to the foregoing requirements, it would, on or before the 1st of July next, become indebted to the Subway Construction Company as hereinafter more fully set out, in the sum of approximately \$3,770,000.

The petition further described the railroads and their equipment, and recited that the latter, as the same appeared on its books as of December 31, 1907, cost the petitioner the sum of \$26,056,641.91.

The petitioner proposed to include in the said mortgage —

1. All its leasehold interest in the subway railroads in the city of New York assigned to it,— first by John B. McDonald; second, by the Rapid Transit Subway Construction Company — together with all of the equipment provided in connection with said rapid transit railways, pursuant to the contracts with the city of New York relating thereto;

2. All other real estate owned by it in the city of New York;

3. 18,140 shares of the capital stock of the Subway Realty Company (out of a total authorized and issued capital of 20,000 shares) of the par value of \$100 each;

4. 32,048 shares of the capital stock of New York & Queens County Railway Company (out of a total issued capital of 32,350 shares) of the par value of \$100 each;

5. 2,500 shares of the preferred stock and 7,360 shares of the common stock, each of the par value of \$50, and \$500,000 in first mortgage bonds of the New York & Long Island Traction Company, constituting one-half of the outstanding stock and bonds of said company;

6. 3,000 shares of stock of the par value of \$100 each, and \$300,000 first mortgage bonds of Long Island Electric Company, being one-half of the outstanding stock and bonds of said company.

That the purposes for which bonds are proposed to be issued under the mortgage are as follows:

(a) \$18,000,000 to provide for the purchase or retirement of the \$15,000,000 face value 4 per cent three-year gold notes of the company maturing May 1, 1908.

(b) \$12,000,000 to provide for the purchase or retirement of the \$10,000,000 face value three-year 5 per cent gold notes maturing March 1, 1910. (Provision was made for the event of an extension of either of said issues of gold notes by depositing as collateral security for the payment thereof the amount of bonds so reserved with respect to each of said issues.)

(c) The remainder to be issued from time to time only for the purposes enumerated in section 7 of article II of the trust deed (conforming to the restrictions with respect to the voting or consenting power of the stock of Interborough Rapid Transit Company pledged thereunder in the trust agreement between Interborough-Metropolitan Company and Morton Trust Company, as trustee, dated March 5, 1906), being briefly, to pay for construction or acquisition of or improvements, betterments, additions to, extensions of or in payment for lines of rapid transit railway in the city of New York and other lines of railway of any character in said city owned or leased by a corporation at least 90 per cent of whose stock is owned by Interborough Company, or to fund or refund the indebtedness of said company contracted for one or more of said purposes, or indebtedness of any other company assumed or guaranteed by Interborough Company and contracted for one of said purposes. Bonds issued under said section 7 were to be authenticated and delivered from time to time only upon proof of facts authorizing such issue, and except when used to reimburse the company for expenditures incurred for one or more of the authorized purposes, or to fund or refund its indebtedness, proceeds of sale were to be deposited with the trustee and applied only to the purposes authorized and upon proof made as provided in said section 7.

The petitioner prayed for authority to at once issue the following amounts of bonds of the said total proposed issue, viz.:

(a) For the purpose of securing the payment of extension of the said 4 per cent three-year gold notes maturing May 1, 1908, \$18,000,000.

(b) For the purpose of refunding other indebtedness of Interborough Company (time and demand loans and amounts payable) incurred for one or more of the purposes in section 7 of article II of the mortgage specified, \$12,000,000.

The said mortgage had been authorized by the board of directors of Interborough Rapid Transit Company and a special meeting of the stockholders had been called to be held March 28, 1908, for the purpose of considering and acting upon the proposition to issue said bonds, and to authorize and consent to said mortgage.

The petitioner further showed that 339,128 shares of the petitioner's capital stock was owned by the Interborough-Metropolitan Company, a domestic business corporation, and pledged to the Windsor Trust Company to secure an issue of \$70,000,000 of the 4½ per cent bonds of the said Interborough-Metropolitan Company, and that the Windsor Trust Company, trustee, as the holder of 339,128 shares of the stock of the petitioner, had executed a proxy in favor of nominees of said Interborough-Metropolitan Company to vote upon the said stock at said special meeting, and the petitioner had filed with the board a duplicate original of said proxy.

The petitioner further showed that \$30,000,000 face value of the bonds proposed to be issued as aforesaid were to be used as follows, viz.: \$18,000,000 face value for the purpose of refunding or securing the extension of time of payment of its said \$15,000,000 face value of gold notes which mature May 1, 1908, as above mentioned, and that \$12,000,000 face value of said bonds were to be employed for the purpose of discharging or refunding its above mentioned current unsecured obligations, aggregating the sum of \$10,352,726.11. That these obligations were principally incurred to raise moneys for the equipment of the subways; to meet the excess cost of the construction of the Brooklyn extension of the subway over the amounts payable by the city of New York, and to reimburse the petitioner for amounts advanced for such purposes.

The petitioner further showed that no contract had yet been made for the sale of said bonds.

The petitioner further showed that it had not yet concluded negotiations for the payment or extension of its said 4 per cent three-year gold notes, maturing May 1, 1908, nor for the sale of the new bonds to meet its above mentioned current obligations, and it might be found necessary that the petitioner should issue its promissory notes in extension of the said 4 per cent three-year gold notes and secure the payment of such extended notes by the pledge of the \$18,000,000 face value of bonds reserved for that purpose in the proposed new mortgage, and also to issue and sell its promissory notes secured by the pledge of the new bonds, to an amount, face value, of not exceeding 20 per cent of said notes, to provide funds to meet its above mentioned current unsecured obligations.

The petitioner, therefore, also prayed that the Commission at this time approve the issue of its promissory notes to an amount not exceeding in all the sum of \$25,000,000 face value, to be dated May 1, 1908, to be payable not exceeding three years from date, with interest payable semi-annually at such rate as may be agreed upon by the petitioner's board of directors, not exceeding 6 per cent per annum, secured by the pledge of not exceeding \$30,000,000 face value of the said proposed new mortgage bonds, issued in accordance with the provisions of the above mentioned proposed mortgage, a tentative form of which was submitted to the Commission for its consideration and approval or amendment.

The petitioner further prayed that the Commission, as the successor to the Board of Rapid Transit Railroad Commissioners in the city of New York, and pursuant to the terms of the contracts for the construction, maintenance and operation of said railroads, respectively, consent to the mortgage of the leases of the subway rapid transit railroads from the city of New York assigned to the petitioner as aforesaid.

Upon filing the said petition the Public Service Commission, by order dated March 6, 1908, directed that the same be heard on Monday, March 16, 1908, at 2:30 o'clock in the afternoon, at the office of the Commission, and that the petitioner be required to publish a notice of said application and the time and place of said hearing, in the manner and as provided in said order; and the petitioner did thereupon cause notice of said application and the said time and place of hearing to be published, in pursuance of such order, and did file the proof thereof with the Secretary of the said Commission before the opening of the said hearing.

Such hearing was had before the full Commission,—Present—Commissioners Wilcox, McCarroll, Bassett, Maltbie and Eustis—and continued from time to time before Commissioner Wilcox, as sitting Commissioner.

The petitioner appeared by George W. Wickersham, Esq., of counsel, and there also appeared in behalf of the Commission George S. Coleman, Esq., General Counsel, and William M. Ivins, Esq., Special Counsel.

There also appeared the Continental Securities Company, a stockholder, by Clarence H. Venner, its president, who opposed the application; and Hon. Thomas L. Feitner, as the holder of bonds of the Interborough-Metropolitan Company secured by the pledge of stock of Interborough Rapid Transit Company under a trust indenture dated March 5, 1906; and Andrew Shiland, holder of 100 shares of petitioner's stock.

Under the terms and provisions of an order dated July 18, 1907, Special Counsel to the Commission, with the aid of accountants appointed for that purpose, had been conducting a preparatory investigation of the financial affairs of the company, with the result that accountants and counsel were prepared to present to the Commission at these hearings documentary and oral evidence as to the financial history and present condition of the petitioner.

The filing of the petition herein opened up a field of inquiry which made it necessary to conclude the investigation under the order of July 18, 1907, so far as concerned the petitioner, and in this proceeding the Commission has examined into the general condition of the petitioner, its capitalization, its franchises and the manner in which its leased, controlled and operated lines are conducted and the use of the capital proposed to be secured by the issue of the proposed bonds and notes. For these purposes the Commission has made and concluded such inquiry or investigation, held such hearings and examined such witnesses, books, papers, documents and contracts as it has deemed to be of importance in enabling it to reach its determination. The accountants employed by the Commission have examined the books, accounts and vouchers of the petitioner, and have analyzed the equipment account down to December 31, 1907, and all of the important and material vouchers. As a result of such examination various items aggregating \$1,437,102.64 which were charged in equipment account, including discount on notes, lawyers' fees, etc., have been taken out of equipment account and charged in a separate account, entitled "Contractors' Expense Account," and sundry other changes made, resulting in a revised balance sheet of the petitioner as of December 31, 1907, which has been filed with the Commission.

The general plan sought to be put into execution by the issue of the mortgage and the securities proposed thereunder, the character of the bonds, the character of the proposed short time notes, the use to which the bonds are to be put as collateral security for the notes, the power of redemption, etc., may be summarized as follows: That for \$15,000,000 of notes and \$10,000,000 of the unfunded debt there shall be issued \$25,000,000 of three year 6 per cent gold notes of the company, redeemable on any interest day at par and interest. That these notes shall be secured by the issue under the mortgage, and the pledge, pursuant to a trust agreement the tentative form of which has been submitted to this Commission, of the bonds of the proposed new issue, bearing interest at such rate as may be determined upon by the board of directors of the company not to exceed 5 per cent per annum, to the aggregate face amount of \$30,000,000, it being provided in the said trust agreement that so many of said bonds so pledged as collateral as may not be required to retire the said note issue shall be cancelled and thereafter treated as though never issued under the mortgage, when the said note issue shall have been fully paid or otherwise retired. Certain of the original provisions of the tentative mortgage have been so changed and amended as to cover the foregoing summary of the provisions thereof.

The proposed mortgage contains provisions for a sinking fund of not less than \$300,000 per annum, payable annually commencing November 1, 1910, to be applied, first to the purchase of bonds outstanding secured by the mortgage, at the lowest price at which the same shall be tendered to the trustee after due public notice,

not exceeding that at which they may be compulsorily purchased, and second to the compulsory purchase for the sinking fund, after drawing by lot, by the application of so much of said annual sinking fund payment as may not be used for purchase of bonds voluntarily tendered as aforesaid, at a price to be presently mentioned; all bonds purchased for the sinking fund to be stamped as irrevocably belonging to the sinking fund and not subject to reissue, but to be kept alive for the purpose of earning interest to augment the annual sinking fund payment. All bonds purchased for redemption for purposes other than the sinking fund to be cancelled. The proposed price at which bonds are to be subject to compulsory purchase for the sinking fund in the tentative mortgage submitted is fixed at 105 per cent.

According to the statements submitted by the auditor of the company, a sinking fund payment of \$300,000 per annum, payable annually, and applied to the purchase of 5 per cent bonds to be kept alive for the purpose of augmenting the sinking fund payments by annual interest accretions would, if invested in bonds at 105 per cent, retire \$30,000,000 face value of bonds in 38 years, and \$55,000,000 of bonds in 50 years, and would be still more adequate in the event of the redemption or retirement of the bonds being made on the basis of 105 per cent, and of course if applied to the purchase of bonds at less than either of the two figures named would to that extent accelerate the ultimate retirement of the entire bond issue.

*The Petitioner's Existing Indebtedness.*

The present obligations of the company are:

1. \$15,000,000, 4 per cent three-year gold notes which mature May 1, 1908.
2. \$10,000,000, 5 per cent three-year gold notes which mature March 1, 1910.
3. Promissory notes aggregating \$6,250,172.55 payable on demand or not later than June 23, 1908, \$600,000 of which bear interest at the rate of 4½ per cent per annum and the remainder at the rate of 6 per cent.
4. Accounts payable to reimburse operating and income accounts for expenditures for capital purposes, as of January 1, 1908, \$5,232,553.56.

Taking these items up in their order, it may be said:

The first calls for no especial comment. The obligations mature with the expiration of the present month, and the company will be in default thereon unless it is able to secure an extension of the specific indebtedness, or to fund such indebtedness by an issue of new obligations, for leave to issue which the pending application was made.

2. Provision has already been made for the security of this issue of \$10,000,000 gold notes by the terms of a trust agreement between the petitioner and the Morton Trust Company dated March 1, 1907, which provides as follows:

"8. That in case the company shall mortgage its leasehold interests in the said rapid transit railroads or in the said Manhattan Railway, or pledge any of the capital stock of Rapid Transit Subway Construction Company, New York & Queens County Railway Company, New York & Long Island Traction Company, or Long Island Electric Company, or of any successor or successors of said companies, owned by it, prior to the payment of all of the notes issued hereunder, such mortgage or pledge shall be in part for the benefit and security of the holders of said notes and coupons, and shall expressly provide that said notes and coupons shall have a lien upon the premises and property so mortgaged or pledged, equal to the lien of any other obligations of the company which may be secured thereby."

Inasmuch as most of the properties described in the above quoted paragraph of the said trust agreement are to be pledged under the proposed mortgage, and as the said \$10,000,000 of notes have still nearly two years to run, it has evidently not been deemed necessary by the petitioner to ask leave at this time to issue bonds under the proposed mortgage with which to redeem the said \$10,000,000 of 5 per cent gold notes; but it has been necessary to provide for the protection of these notes under the lien of the mortgage, so that the mortgage will not only, immediately upon its execution, become security for the payment of the proposed new issue of bonds, but as well for the payment of the \$10,000,000 5 per cent gold notes which are not presently sought to be refunded.

Among the assets of the petitioner there is an item of about \$4,000,000, known as the Manhattan Railway Guaranty Fund, which consists of an investment in securities, a list of which constitutes a part of the record on this application, aggregating a par value of \$4,993,000, and a market value as of the quotations of April 8, 1908, of \$4,124,724. This guaranty fund (subject to the requirements of the Manhattan lease) has been pledged for the payment not only of item No. 1, namely, the \$15,000,000 of 4 per cent gold notes, but also of item No. 2 now under consideration. The redemption of the \$15,000,000 of 4 per cent gold notes by the proceeds of the proposed issue of bonds, and the use to which the same are to be put, will result in relieving such guaranty fund of the lien of the \$15,000,000 of 4 per cent gold notes, and will leave the same attributable solely to the pledge to secure the payment of the \$10,000,000 5 per cent gold notes, to which I am now referring, so soon as the fund shall have been discharged from the pledge under which it is now held in conformity with the terms of the lease from the Manhattan Railway Company to the Interborough Rapid Transit Company. This discharge will occur on the 1st of July, 1909, provided the covenants of the lessee under the terms of said lease shall have been faithfully kept, and the said lessee shall have continued to pay dividends at a rate of not less than 4 per cent per annum upon all of its capital stock. As appears by the petition, dividends have been paid as follows:

For the calendar year 1904.....	5%
For the calendar year 1905.....	7½%
For the calendar year 1906.....	8¾%
For the calendar year 1907.....	9%

It will be apparent from the foregoing why the petitioner has not included the guaranty fund in the mortgaged property. If hereafter it makes an application to this Commission for leave to issue bonds under the terms of the proposed mortgage, with which to secure funds for the redemption of the said \$10,000,000 of 5 per cent gold notes at maturity, the leave of the Commission to make such an issue for such purpose can be conditioned upon the application in the first instance of the proceeds of the guaranty fund, assuming that the same shall have been discharged of its present obligations, to the redemption of the amount of new bonds necessary to be issued in order to redeem the said \$10,000,000 of gold notes.

3. The item of \$8,250,172.55 of outstanding indebtedness represented by promissory notes, calls for no comment at this time. The list as set out in the record of the hearing of April 7th shows sufficiently in detail what these notes are, and there is no question as to the fact that they were issued for and represent value, and that their proceeds were devoted to the necessary, proper and legitimate business of the company.

4. The item of accounts payable to reimburse operating and income accounts for expenditures for capital purposes, to the amount of \$5,232,553.56, has been explained under oath by the auditor of the company. It appears that the capital of the company has been inadequate for the purpose of meeting all of the necessary expenditures for capital purposes, and that in order to meet the same it has been necessary to avail of the company's credit; that such credit, however, has not been availed of to the extent of enabling the company to meet all of its capital expenditures from the use of such credit, and that it has been necessary for the company to draw upon its operating receipts for capital purposes. The capital account thus becomes indebted to the operating account, and the petitioner now asks leave to include in the bonds and notes sought to be issued, as by the terms of the petition, an amount sufficient to provide for the payment not only of outstanding accounts payable to third parties for labor, material, supplies and other matters incident to the operation and maintenance of the road, aggregating \$1,769,869.82, but also to enable the capital account to restore to operating account the sum of \$3,462,683.94 which will enable the operating account in turn to meet other charges now due and payable by it, among others the pending indebtedness of the company for taxes, properly payable out of operating receipts, but not yet paid because of litigation and in view of the fact that it has been found necessary to utilize the operating receipts for capital purposes as aforesaid.

It is, however, not necessary to pass upon this point at the present time in view of the fact that it is also estimated that the Brooklyn extension of the Subway will cost the Interborough Rapid Transit Company, over and above what is paid on account of construction by the city, \$9,696,037, of which the Interborough has already paid over to the construction company \$2,624,910, and has loaned to the construction company and which will be applicable to this purpose, \$3,300,000, leaving still to be paid by the Interborough as a minimum obligation, the sum of \$3,771,147.

The foregoing facts summarize and reflect all of the evidence and testimony with regard to the indebtedness of the company as bearing on, to quote the phraseology of section 55 of the Public Service Commissions Law, "the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidences of indebtedness reasonably required for the purposes of the corporation."

*The Petitioner's Available Assets.*

So far as concerns the petitioner's assets, the situation may be summarized as follows:

It has disposable, for the purposes of the proposed mortgage:

1. The leases from the city of New York of the municipally owned subways.

2. The lease of the Manhattan Railway.

3. The equipment of the Subway division.

4. Stock and bonds of the following companies:

New York & Queens County Railway Company.

New York & Long Island Traction Company, and

Long Island Electric Railway Company.

of an aggregate cost of \$4,251,443.38, as set out in the petition.

5. 28,000 out of 50,000 shares of the New York City Interborough Railway Company.

6. 18,140 shares of the capital stock of the Subway Realty Company out of a total of 20,000 shares, costing the petitioner \$2,106,265.84, and an open account of \$942,122.72 for moneys advanced to said company by the petitioner.

7. The entire capital stock of a par value of \$6,000,000 of the Rapid Transit Subway Construction Company, for which the petitioner has paid in cash and stock \$12,000,000, as shown by the balance sheet of December 31, 1907.

8. 985 shares of the capital stock of the New York & Long Island Railway Company, for which the petitioner paid, as appears from the record, \$402,035.17.

9. There are other items of assets, which for the purpose of the Commission upon this application I regard as negligible at this time.

I postpone for the present the consideration of the values of (1) the leases of the Subway and (2) the lease of the Manhattan Railway, inasmuch as the determination of the present value of these leases calculated upon present net earnings involves the consideration of the net earning capacity of the properties as a whole and petitioner's ability to meet the obligations, either now existing or sought to be incurred. I now, therefore, first consider more in detail the value of the properties above enumerated.

*A — Long Island Railroads* — With respect to the New York & Queens County Railway Company, the New York & Long Island Traction Company, and the Long Island Electric Railway Company — the three principal subsidiary companies — full statements have been supplied, sworn to by the auditor of the company, with regard to their properties, real and personal, as well as their earning capacity and the expenses of operation and maintenance. The petitioner has also submitted a careful detailed report concerning the cost of these properties and their present physical condition, prepared by Messrs. Sanderson & Porter, a well-known firm of contracting engineers. I make no reference at this time to the stock of the New York City Interborough Company, in view of the fact that the petitioner has not proposed, and does not propose, to include it in the mortgage, and for the further reason that its lines are incomplete and in process of construction.

*B — Subway Realty Company* — The Subway Realty Company has a capital stock of \$2,000,000, of which \$1,814,000 is owned by the Interborough Rapid Transit

Company, having been acquired by it at the cost above stated. The only asset the Subway Realty Company has now is the property known as the Hotel Belmont, situated at the southwest corner of 42d street and Park avenue, in the borough of Manhattan. This property is at present subject to a mortgage of \$2,800,000, carrying interest at the rate of 5 per cent, besides an indebtedness to the petitioner in the amount of \$942,122.72, upon which interest is being paid at the rate of 6 per cent per annum, which indebtedness the petitioner proposes to embrace in the mortgaged property. The Subway Realty Company has since this lease declared and paid on its capital stock, including that owned by the Interborough Rapid Transit Company, dividends at the rate of 5 per cent per annum. A valuation of this property, made by Horace S. Ely & Company, was submitted at the hearing on April 7th, that firm having appraised the property at a valuation of between \$5,500,000 and \$6,000,000. The property is leased for the term of 20 years from November 1, 1906, at the annual rental of \$318,256.34, over and above all taxes, assessments, water rates, insurance premiums, repairs, etc.

*C — New York & Long Island Railroad Company*—As to the New York & Long Island Railroad Company, or "Steinway Tunnel," it may be stated that it is generally admitted that the franchise of this company to be a corporation has expired, but there is now in litigation the question as to whether the franchise to own, maintain and operate a railroad is not still in existence, and available for the benefit of the creditors of the corporation, as such creditors may be represented by the board of directors now acting as trustees or otherwise. Practically the sole creditor, however, of such extinct corporation is the present petitioner, which has advanced upwards of \$7,000,000, representing the cost of the construction of the so-called "Steinway Tunnel," so that, clearing the ground of technical and legal intricacies, it appears that the petitioner is the equitable owner of the entire beneficiary interest of the so-called "Steinway Tunnel" property.

By the draft or tentative mortgage, as originally submitted with the petition, no provision was made for the pledge of the property known as the "Steinway Tunnel." Owing to the unsettled legal questions affecting the status of this property, it would not appear to be expedient to provide for its direct pledge under the mortgage, but the company acquiesces in the suggestion that there be inserted in the mortgage a covenant to the effect that the proceeds of any sale of this property, if and when realized, shall be applied to the reduction of the indebtedness to be secured by the mortgage.

*D — The Subicay Equipment Account*.—The equipment account, by the balance sheet of June 30, 1907, represented a cost to the company of \$25,147,451.56. As appears from the testimony of the commission's expert accountant, Mr. Marvyn Scudder, the equipment account has been carefully examined, analyzed and audited. The account has been brought down to the end of the calendar year 1907, and now appears upon the books of the company as representing a cost to the company at that date of \$24,768,963.46, exclusive of real estate. As a result of the examination and analysis of the accounts made by Mr. Scudder, the company has acquiesced in the removal from its subway equipment account of items aggregating \$1,302,817, which are now carried under the ledger title "Contractors' Expense Account," as not at this time representing tangible assets available for the purposes of pledge under the mortgage, the principal items in such contractors' expense account consisting of discounts on loans, counsel fees, and like matters.

To determine the exact replacement value of this equipment at the present time would be a long and tedious operation, which it was unnecessary to go into, inasmuch as the security offered for the protection of the proposed issue of bonds outside of and over and above the value of the equipment is ample and the investigation which has been made was not conducted with the view of estopping, and cannot estop the city of New York in any matters or questions which may hereafter arise between it and the petitioner as to the actual cost of said equipment to either the petitioner or the Rapid Transit Subway Construction Company.

The Commission's expert, Mr. McLimont, has made a careful examination of the physical condition of the properties constituting the company's equipment, and has, among other things, reported as follows:

"The general design and capacity of the working parts of the equipment are good and sufficient to meet the present requirements of the system. . . . I found that the equipment was all in thoroughly first-class operative condition and having been exceptionally well maintained, and in fact in some instances the original apparatus has been improved since its installation, the depreciation should be set at the minimum for each part of the property."

*E—Manhattan Lease.*—Inasmuch as the lease from the Manhattan Railway Company is itself in the nature of a franchise, for the purpose of determining the actual value in operation of the system as a whole, I shall consider this item in conjunction with that of the value of the leases of the Subway railroads, and the controlled companies, at the conclusion hereof.

*F—After Acquired Equipment.*—The tentative mortgage pledges all of the real estate of the Interborough Rapid Transit Company by specific description, including all that which at present constitutes, technically, a part of the equipment of the Subway. The equipment proper is covered in general terms. The tentative mortgage was, however, considered to be inadequate in that it did not include all after acquired property which might constitute a part of the equipment as defined in the leases of the Subway. The company has, however, acquiesced in the suggestion that the terms of the mortgage be so amended as to include in the mortgaged premises all property now owned or hereafter acquired by the company which shall constitute a part of the equipment as the same is defined in the leases of the Subway, thereby materially strengthening and improving the security.

*G—Claim Against City of New York.*—In this connection it may also be noted that a claim against the city of New York arising out of the construction of the Subway under Rapid Transit Contract No. 1, has been asserted in the name of John B. McDonald, the original contractor, but a three-quarters interest therein is owned by the construction company, the remaining one-quarter interest having passed to the petitioner. This claim is now in the course of liquidation under the terms of an arbitration agreement between the parties in interest in the form of an amendment to Rapid Transit Contract No. 1, approved by this Commission. Inasmuch as this claim is at present undetermined and indeterminate, and inasmuch as when recovered, and for whatever amount recovered, it may be taken into consideration by this Commission in connection with an application for leave to make any further issue of bonds under the mortgage, no requirement should be made by the Commission at the present time that such indeterminate claim be included in the mortgage.

Having thus considered the petitioner's indebtedness now sought to be refunded, and its assets available for the purpose of securing the payment of obligations which may be authorized for such refunding purposes, there still remains to consider:

*H—The Present Net Earning Capacity of the System.*—There remains to consider the present net earning capacity of the petitioner's Subway and Elevated railroad systems, operated as a whole.

The estimate of the company's auditor based upon the actual income expenditure for the first three months of the calendar year, with due consideration for the actual earnings of the past calendar year, is as follows:

Gross earnings .....	\$24,959,728
Operating expenses .....	<u>10,903,996</u>
Net earnings .....	\$14,055,732
Other income .....	<u>1,070,772</u>
Gross income .....	\$15,126,504
Interest on bonds and 3-year gold notes and rentals.....	\$5,296,832
Taxes .....	<u>1,600,000</u>
Total interest, rentals and taxes.....	6,896,832
Balance .....	\$8,229,672
7% on Manhattan Ry. Co. stock.....	<u>4,200,000</u>
Net income .....	\$4,029,872
Dividends on \$35,000,000 Interborough Rapid Transit Company capital stock .....	<u>8,150,000</u>
Surplus .....	<u>\$879,872</u>

It will be noticed that the foregoing would show if the future justifies the present estimate, an apparent earning capacity upon the present basis of the joint operation of the two divisions, of 9 per cent upon the \$35,000,000 of capital stock of the Interborough Rapid Transit Company, and a surplus of \$879,672, after making all provisions for the payment of the interest on funded and floating debt, and after making provision for maintenance account and operating expenses as the same actually prevailed for the first three months of the calendar year, without reference to their adequacy or liability to increase. There should, however, in my judgment in any event, be eliminated from this estimate of surplus the sum of \$275,000, which the company's auditor has included as the estimated additional contribution to gross income from the opening of the extension of the Subway to Atlantic avenue, Brooklyn. Although the same may be realized in the future it is at present a matter of pure speculation. This estimated surplus is, however, subject to reductions precisely as the petitioner itself may voluntarily make a larger expenditure for maintenance or a new attribution to reserve for depreciation, or as the petitioner may be required so to do by this Commission, and it is impossible for one or anyone at this time to say more, nor are we called upon to say more than that the net income will in my opinion be much more than ample to meet the service of the notes and bonds to issue which at the present time the petitioner asks leave, without reference to the dividends on the stock.

The Commission acquires jurisdiction of the matter in this petition under and by virtue of the provisions of section 55 of the Public Service Commissions Law, and of subdivision 10 of section 4 of the Railroad Law.

The petitioner is without authority to execute the mortgage or to issue securities thereunder, and the Commission is without authority to authorize such act on the part of the petitioner, unless the bonds, notes, or other evidences of indebtedness sought to be secured by the mortgage have been found by the Commission to be necessary —

1. For the acquisition of property, construction, completion, extension or improvement of its facilities; or
2. For the improvement or maintenance of its service; or
3. For the discharge or lawful refunding of its obligations; —

and in the event of the Commission authorizing such issue it is necessary for the Commission to find that in its opinion the use of the capital to be secured by the issue of such stocks, bonds, notes or other evidences of indebtedness is reasonably required for the said purposes of the corporation.

The Commission has carefully considered each detail of the proposed mortgage, with the result that it has suggested to the petitioner many changes in the form, phraseology and scope of that instrument, in respect more particularly to the following matters:

1. It has been deemed desirable and proper that the mortgage should include the lease of the Manhattan Railway, in order that the bondholders shall have the security of the entire earning capacity of the railroad system operated by the petitioner.
2. The proceeds of the Steinway tunnel, when and as the same shall be disposed of, should be devoted to the purposes of the mortgage as hereinbefore set out.
3. The sinking fund is approved as proposed in the petition, but the provisions of the mortgage have been modified so that the annual sinking fund payment may be increased by the petitioner at any time, and must be so increased if the Commission, as a condition of the authorization of any subsequent issue of bonds, shall so require.
4. No bonds shall be issued at any time without the previous approval of the Commission.
5. The price at which bonds may be purchased for the sinking fund or redeemed at the option of the petitioner should be 103 per cent and accrued interest, instead of 110 per cent and accrued interest, as requested in the petition.
6. Bonds redeemed pursuant to the option reserved to the company shall be cancelled, and shall not thereafter be reissued, and bonds originally issued as security for notes and not used for the payment or redemption of notes shall be cancelled, but a corresponding amount of such bonds may thereafter be issued for the purposes in the mortgage defined, with the previous approval of the Commission.

7. The mortgage has been required to be so altered that instead of bonds being issued thereunder to raise funds with which to make advances to subsidiary companies (taking their bonds in return as security under this mortgage, and thereby devoting to the purposes of the subsidiary companies the proceeds of the new proposed issue) those companies be left to finance their own requirements by the sale of their own securities, upon application to and approval of the Public Service Commissioners, where such approval is required by law.

8. With the exception of such of the bonds as shall be exchanged for the notes of the \$25,000,000 note issue, no bonds may be issued by the company for less than par, except after public advertisement for bids upon due notice; with the right to the company, however, to cause an underwriting syndicate to be formed to take the bonds at a price below which they shall not be offered to the public, and subject to such public offering, and to pay a reasonable commission for the formation of such underwriting syndicate; and in respect of the exception made to the foregoing rule in the matter of the issue now authorized the bonds issued and pledged as security for the company's notes may not be disposed of by the company in exchange for such notes at a discount of more than 1 per cent without the consent and approval of the Commission.

9. The proceeds of the sale of all bonds must be set aside, separate and apart from all other assets and funds of the company, and used only for the purposes for which the issue of the said bonds or notes is authorized.

10. The company must keep true and correct accounts showing the application by it of the proceeds of the sale of all bonds, and showing also the receipt and application by it of the proceeds of the sale of all property at any time subject to the lien of the mortgage which may be sold free from such lien, which accounts shall at all reasonable times be subject to inspection by bondholders as well as by the Public Service Commission, and such accounts shall be audited from time to time by an impartial accountant or accountants appointed for such purpose by the Public Service Commission, and a copy of the accounts as so audited be subject at all reasonable times to the inspection of any bondholders.

11. The proceeds of the sale of all properties at any time subject to the mortgage and sold free from the lien thereof must, except so far as the same shall be replaced by a new property or equipment, be applied to the reduction of the mortgage debt.

The foregoing are the most salient changes which have been suggested by the Commission (and which have been acquiesced in by the petitioner) as necessary to the more perfect protection and security of the bondholders of the company, to the prompt and speedy reduction of the company's indebtedness, and to the more perfect accounting for the disposition of the funds procured through the sale of bonds as authorized.

Special attention may be called to the matter of the Subway Realty Company. The law authorizes the acquisition by the company of real property "for the purposes of its incorporation," which "shall be deemed to be required for a public use" (Railroad Law, section 7). By section 18, subdivision 5 of the Railroad Law, the company is authorized "to acquire and use such real estate and other property in this State as may be necessary in the conduct of its business, but the value of such real estate held at any one time shall not exceed the sum of one million dollars (\$1,000,000)."

If the right of the petitioner to acquire and hold real property were confined to the two foregoing provisions of the law, it is doubtful whether this Commission could recognize the propriety of its investment in the so-called Belmont Hotel property, but by section 42 of the Stock Corporation Law it is provided that:

"Any corporation may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor."

It is also provided by section 40 of the Stock Corporation Law as follows:

"Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation,

or in any certificate amendatory thereof or supplementary thereto filed in pursuance of law. \* \* \*

Article 12 of the certificate of incorporation of the petitioner provides as follows:

"The corporation shall have power to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its own stock, bonds or other obligations."

It is therefore indubitable that the holding of the Interborough Rapid Transit Company in the capital stock of the Subway Realty Company is for a lawful corporate purpose, and that it has corporate capacity not only to hold, but to pledge, said stock as collateral security for its lawful obligations. The question here presented is not as to whether or not this Commission would approve of the issue of new securities for the purpose of the acquisition by the company of real estate for a hotel purpose, but whether the petitioner's investment heretofore made in the capital stock of the Subway-Realty Company is, or was at the time thereof, a proper and lawful investment, as to which there can be no doubt.

The mortgage as executed will in all respects be absolutely subordinate to the rights of the city as lessor under the provisions of the contracts of lease, and can in no way, directly or indirectly, affect, modify, limit or change such rights, and neither will nor can constitute a lien upon the property detrimental or antagonistic to the interests of the city as lessor; and in this connection the proposed mortgage has been so modified as to include within its terms not merely the interest of the petitioner as lessee in the subway railroads, but also all property, real and personal, now, and which may at any time hereafter be acquired, as a part of the equipment of the two said subway railroads, pursuant to the terms of the leases thereof, to the end that in case the mortgage should be foreclosed, the purchaser would step into the shoes of the lessee as the holder not merely of the terms created by the leases, but of all of the property constituting at that time the equipment of the said railroads under the provisions of the contracts, and therefore the better enabled to fulfill and comply with the provisions of the said leases, subject, nevertheless, always, to the city's right of acquisition of the equipment at its then appraised value, at the expiration of the term.

It must also be borne in mind that the authorization of the issue of the \$25,000,000 of notes secured by the \$30,000,000 of bonds as proposed is not in any respect an authorization to increase the company's indebtedness. The unsecured indebtedness of the corporation at the date of the application amounted to \$35,352,726.11. The authorized issue of bonds at the present time is \$30,000,000, to secure a note issue of \$25,000,000, and there is also brought under the security of the mortgage an outstanding note issue of \$10,000,000 maturing two years hence. The purpose for which the issue is authorized is solely for the payment of petitioner's obligations, or for the payment of indebtedness about to mature, as representing accounts payable and obligations incurred for the acquisition, construction, completion, extension and improvement of the company's facilities in the matter of the so-called Brooklyn extension. The obligations heretofore incurred and not yet due by and from the petitioner for the acquisition of the said property and the construction and extension of its road, as aforesaid, including among others the sum of \$3,771,147, or thereabouts, payable to the Rapid Transit Subway Construction Company on the completion of the Brooklyn extension of the rapid transit railway to its terminus at Flatbush and Atlantic avenues, Brooklyn, being on account of the excess cost of said railway over and above the amount payable with respect to the construction thereof by the city of New York. The present transaction, therefore, merely provides for the extension or funding of the company's indebtedness in respect to the greater part thereof, and for the liquidation of the remainder thereof. The company's creditors under the mortgage will be in a better position than the present creditors would be in if their claims were reduced to judgment and the property in the hands of a receiver; and a failure to authorize the refunding and the better securing of the company's existing indebtedness would have the effect of compelling the company to seek extensions of its existing debt upon onerous terms, even assuming that, given the present state of the market, such extensions could possibly be secured, or otherwise to fall under the administration of the court. The result of the refunding as proposed is to the benefit of the stockholders and creditors of the company, and carries with it the

assurance to the public of the company's ability to exercise the functions involved in the acceptance by it of its franchise and the terms of the obligations assumed by it to the city of New York in the leases of the rapid transit railways more perfectly and satisfactorily, and to the maintenance of the company's credit under conditions which will the more perfectly enable it to comply with the requirements of this Commission for an improved and extended service.

The Commission has held six public sessions on this matter. No objections have been made to the granting of the petition except on the part of one stockholder, to wit, Continental securities Company, represented by C. H. Venner, its president, the holder of 300 shares of stock, and which has objected upon the five following grounds:

1. That the notice calling the meeting of the stockholders of the petitioner for the purpose of authorizing the mortgage was not sufficiently specific.
2. That the Interborough-Metropolitan Company, or Windsor Trust Company, trustee, as holder of 339,128 shares of stock of the petitioner, was not entitled to vote for the approval of the mortgage, upon the ground that the said Interborough-Metropolitan Company had acquired said stock by issuing its bonds pursuant to an illegal combination with other companies constituting a combination and monopoly in violation of law.
3. That the proposed bond issue is insufficient to meet the future requirements of the company, and that it would be a serious mistake to authorize a mortgage for less than \$75,000,000, and that even \$100,000,000 would be found insufficient within twenty years.
4. That the investment in the stock of the Subway Realty Company and the advances to that company were unlawful and improper.
5. That the claim of the petitioner against the city of New York when collected should be applied to the payment of the floating debt, and that no bonds should be issued for purposes which could be met by applying the amount of the said claim against the city.

Considering these objections in their order, it is my opinion:

1. As to the notice: The notice calling the special meeting of the stockholders states it to be "for the purpose of considering a proposition to issue and dispose of bonds for the refunding of the obligations of the company and for its other corporate purposes, and to authorize and consent to a mortgage of the property and franchises of the company to secure payment of said bonds and of the present outstanding gold notes of the company or any renewals or extensions thereof, and to take such other action in connection therewith as may be brought before the said meeting."

The requirements for action by stockholders regarding the issue of mortgages by a railroad corporation are those contained in subdivision 10 of section 4 of the Railroad Law, to wit:

"But no mortgage except purchase-money mortgages shall be issued by any railroad corporation under this or any other law without . . . the consent of the stockholders owning at least two-thirds of the stock of the corporation . . . which is represented and voted upon in person or by proxy at a meeting called for that purpose upon a notice stating the time, place and object of the meeting. . . ."

The rule as to the form and contents of such notice is succinctly stated in the American & English Encyclopaedia of Law, Second Edition, vol. 26, pages 992-993:

"No particular form of notice is required, except that the notice must generally show the authority of the person issuing it and the time, place, and objects of the meeting. In stating the time not only the day must be given, but the hour also, and the objects of the meeting, that is, the business to be transacted, must be stated with sufficient particularity to enable the stockholder to determine for himself whether it is necessary for him to attend in order to protect his interests. Technical objections to the notice, however, will not be sustained where it is substantially sufficient to enable the stockholders to determine whether their interests are involved and to attend the meeting if they wish to do so, and no one has been misled by the defects complained of."

To the same effect see *Cook on Corporations*, vol. 2, section 595. See also *Langan v. Franklin*, 26 Abb. N. C. 102; *Jones v. Railroad*, 87 N. Y. 234; *South School District v. Blakeslee*, 13 Conn. 227; and *Evans v. Boston Heating Co.*, 157 Mass. 37.

The notice as given not only seems ample and sufficient, and in all respects conforming to the requirements of the statute, but the objecting stockholder appeared at the meeting and participated in the discussion and voted upon the proposition to authorize the mortgage, thereby exercising his right of self protection, to enable him to have an opportunity to exercise which right is the purpose of the statutory requirement for notice.

2. The objection to the right of the Interborough-Metropolitan Company or Windsor Trust Company as trustee, to vote the pledged stock: It appears from the proofs submitted that the stockholders of record, to a number in excess of the statutory requirement, appeared at the special meeting and voted to consent to the mortgage, and it is not within the competence of the Commission to go behind such record and determine who are stockholders *de jure*, that being a matter exclusively for the courts, and it being the duty of the Commission to recognize the stockholders *de facto* until any questions of law with respect to the holding of such stock shall have been judicially determined.

3. The legality of the investment in the stock of the Subway Realty Company has been already considered, and as hereinbefore appears it is my opinion that the objection is not well taken.

4. As to the objection that the company's claim against the city should not be included in the mortgage, it is unnecessary to consider it other than to note that it was not proposed by the company that the same should be included in the mortgage, and it has not been deemed wise by the Commission to include the same, but rather that the same, whatever it may be if any, when recovered shall be a free asset in the hands of the company for its general corporate purposes.

5. As to the objection that the mortgage is not large enough, it is obvious that it is quite ample for the purpose, and that to authorize a larger issue at this time would be improper and injudicious. The mortgage is ample to meet the requirements of the company at least for some years to come, and when it becomes indubitable that the company's requirements are larger than those which could be properly cared for out of the proceeds of bonds to be issued under the present mortgage it will then be the proper time to consider the enlargement of the mortgage debt by a refunding, and to secure still further issues of the petitioner's bonds.

Thereupon the following final order was issued:

ORDER No. 428.

April 23, 1908.

Whereas, Interborough Rapid Transit Company filed with the Public Service Commission for the First District its petition verified the 4th day of March, 1908, praying for the approval by said Commission of the execution of a mortgage by said company to secure an issue of not to exceed \$55,000,000 of its 45-year gold mortgage bonds, as well as certain of its outstanding gold notes, and authorizing the immediate issue of \$30,000,000, face value, of said bonds, and for authority to issue its promissory notes to an amount not exceeding \$25,000,000, face value, to be dated May 1, 1908, payable not exceeding three years from date, bearing interest payable semi-annually at not exceeding six per cent per annum, and to secure the said notes by the pledge of not exceeding \$30,000,000, face value, of the said proposed new mortgage bonds; and praying also the consent of the said Commission as the successor to the Board of Rapid Transit Railroad Commissioners for the City of New York, pursuant to the terms of the leases of said rapid transit railroads, to assign and encumber the said leases of the rapid transit railroads from the city of New York by including the same in said mortgage.

And whereas, the said Public Service Commission did thereupon by order dated March 6, 1908, direct the said petition to be heard on Monday, March 16, 1908, at 2:30 o'clock in the afternoon, and that the petitioner publish a notice of the said application and of the time and place of the said hearing, in the manner and as provided in said order, and the petitioner did thereupon cause notice of said application and of the time and place of said hearing to be published in pursuance of such order, and did file proof thereof with the Secretary of the said Commission before the opening of the said hearing;

And whereas, the petitioner with the leave of the Commission filed its amended petition bearing date March 14, 1908, and on the said 16th day of March, 1908,

the matter coming on to be heard upon the said petition and said amended petition, and said petitioner having duly appeared by George W. Wickersham, its counsel, and the Continental Securities Company having appeared by Clarence H. Venner, its president, and Thomas L. Feitner having appeared in person, and the petitioner having submitted proofs in support of said application, and the hearing having been duly adjourned from time to time, and the Commission having taken the testimony and having examined the books and accounts of the petitioner, and having caused investigation to be made into the condition and value of the railroads and properties of the petitioner, and being fully advised in the premises, it is hereby

*Ordered*, That the Public Service Commission for the First District does hereby consent to the execution by the said petitioner Interborough Rapid Transit Company, of a mortgage of its leasehold interests in the rapid transit railroads in the city of New York, and the equipment thereof, its leasehold interest in Manhattan Railway and the other property in said mortgage described unto Morton Trust Company, as trustee, said mortgage to be dated as of November 1, 1907, to secure an issue of the 45-year gold bonds of the said company, said bonds to be dated as of November 1, 1907, to be payable November 1, 1952, to bear interest at not exceeding five per cent per annum, payable semi-annually, upon the terms and conditions in said mortgage set forth and contained, and also to secure two certain issues of gold notes of said petitioner, viz.:

(a) \$15,000,000, face value, four per cent three-year gold notes, due May 1, 1908, issued under trust agreement with Windsor Trust Company, trustee;

(b) \$10,000,000, face value, three-year five per cent gold notes, due March 1, 1910, issued under trust agreement with Morton Trust Company, trustee;

Provided that the total amount to be secured by the said mortgage of both bonds and gold notes shall not at any time exceed the sum of \$55,000,000 of principal, and the said mortgage to be in the form identified as seventeenth revise and filed in the office of the Secretary of the Commission on this 23d day of April, 1908.

*Further Ordered*, That the Commission does hereby authorize the issue by the petitioner of \$30,000,000, face value, of bonds pursuant to the said mortgage, and the use of the same by pledging said bonds as collateral security for an issue of \$25,000,000, face value, of the three-year six per cent notes of the petitioner, to be dated May 1, 1908, and to be issued under and in conformity with the provisions of a trust agreement between the petitioner and Morton Trust Company, as trustee, dated April —, 1908, to be in the form identified as seventh revise and filed in the office of the Secretary of the Commission on the 23d day of April, 1908.

*Further Ordered*, That the Commission does hereby authorize the sale by the petitioner of the said \$25,000,000, face value, of said three-year six per cent notes and the application of the proceeds thereof,

(a) To the discharge or lawful refunding of its obligations, viz.:

\$15,000,000, face value, of its four per cent three-year gold notes, due May 1, 1908, issued under trust agreement with Windsor Trust Company, trustee;

\$6,250,172.55 of the promissory notes of the petitioner outstanding April 1, 1908, payable on demand or from time to time on or before June 30, 1908; and

(b) The balance to pay obligations heretofore incurred by the petitioner for the acquisition of property, the construction, completion, extension or improvement of its facilities, or the improvement or maintenance of its service and including the sum of \$3,770,000, or thereabouts, payable to Rapid Transit Subway Construction Company on the completion of the Brooklyn extension of the rapid transit railway to its terminus at Flatbush and Atlantic avenues, Brooklyn, being on account of the excess cost of said railway over and above the amount payable with respect to the construction thereof by the city of New York.

It being the opinion of the Commission that the use of the capital to be secured by the issue of said bonds and notes by the said Interborough Rapid Transit Company is reasonably required for the said purposes of the said corporation.

*Further Ordered*, That the Commission as successor to the Board of Rapid Transit Railroad Commissioners for the City of New York, and pursuant to the provisions contained in the contracts for the construction of the rapid transit railroads in the city of New York, viz.:

(a) Contract between said city and John B. McDonald, dated February 21, 1900, and agreements amendatory thereof and supplemental thereto;

(b) Contract between the city of New York and Rapid Transit Subway Construction Company, dated July 21, 1902, and agreements amendatory and supplemental thereto;

The leasing portions whereof have been heretofore duly assigned to Interborough Rapid Transit Company, does hereby consent to the mortgage of the said respective leases by including the same in the mortgage aforesaid.

*Further Ordered*, That duplicate originals of the mortgage and note trust agreements consented to and authorized as aforesaid upon execution thereof be filed by the petitioner with the Secretary of this Commission.

The company having filed duplicate originals of the mortgage and agreement with the Secretary of this Commission the following final order was issued:

#### ORDER No. 445.

April 28, 1908.

Whereas, by resolutions duly adopted by the Public Service Commission for the First District on April 23, 1908, Interborough Rapid Transit Company was authorized to execute its mortgage unto Morton Trust Company, as trustee, dated as of November 1, 1907, to secure an issue of forty-five year gold bonds of the said company

## ORDERS OF THE COMMISSION ISSUED IN 1908.

137

and of its gold notes, as therein specified, and also its trust agreement to Morton Trust Company, as trustee, dated as of May 1, 1908, said mortgage and trust agreement to be in the form identified by said resolutions as seventeenth revise and seventh revise, respectively, and

Whereas, pursuant to said resolutions, the said Interborough Rapid Transit Company has executed and filed with the Secretary of this Commission on April 28, 1908, duplicate originals of said mortgage and trust agreement, authorized as aforesaid, containing certain corrections and changes of form which have been heretofore submitted to and informally approved by this Commission as tending to improve and perfect said instruments. It is hereby

**Ordered**, That the Public Service Commission for the First District does hereby approve and consent to the execution by the said petitioner, Interborough Rapid Transit Company, of its said mortgage unto Morton Trust Company, as trustee, dated as of November 1, 1907, the duplicate original of which is filed in the office of the Secretary of the Commission on this 28th day of April, 1908, and

**Further Ordered.** That the Commission does hereby approve and consent to the execution by Interborough Rapid Transit Company of its said trust agreement unto Morton Trust Company, as trustee, dated May 1, 1908, the duplicate original of which is filed in the office of the Secretary of the Commission on this 28th day of April, 1908.

In disposing of the \$25,000,000 of short-term notes the Interborough incurred an expense of \$1,450,000 as explained in the following letters:

## INTERBOROUGH RAPID TRANSIT COMPANY.

**Executive Committee,  
115 Broadway.**

THEODORE P. SHORTS, Chairman

NEW YORK, June 26, 1908.

DEAR SIR.—In connection with our recent \$55,000,000 forty-five year mortgage, dated November 1, 1907, it became necessary, as you know, owing to the bond market conditions then prevailing, to issue \$25,000,000 of short-term notes as a temporary relief measure, these notes being secured by \$30,000,000 of the bonds. In carrying out this temporary expedient an expense of \$1,450,000 was incurred, consisting of discounts, commissions and recording tax.

This expense having been eliminated from construction expenditures under a recent ruling of the Interstate Commerce Commission, therefore it follows that it becomes a charge against income account, and while I am not advised of any definite ruling by the Commission as to how it should be treated in income account, I think it is only fair to assume that the same could be distributed over the life of the securities.

Inasmuch as these short-term notes were incidental to and a part of the financing covered by the forty-five year mortgage, and are exchangeable for said mortgage bonds, the amount in question, together with any further tax or discount paid for marketing the remaining bonds should, therefore, it is believed, be distributed over the life of the 45-year mortgage.

As there has been no ruling on this question by your Commission, and as it is necessary for us to close out our accounts for the month of May, I have given instructions to the Auditing Department to follow the practice herein outlined.

Very truly yours,  
**(Signed) T. P. SHONTS,**  
*Chairman*

Hon. WILLIAM R. WILLCOX, Chairman, Public Service Commission for the First District, State of New York, 154 Nassau Street, New York City.

## INTERBOROUGH RAPID TRANSIT COMPANY.

**Executive Committee,  
115 Broadway.**

THEODORE F. SHONTE, *Chairman.*

NEW YORK, July 8, 1908.

Hon. WILLIAM R. WILLCOX, Chairman, Public Service Commission, First District,  
154 Nassau Street, New York City:

DEAR SIR:—Replying to the letter of the Secretary of your Commission, dated July 6, 1908, requesting the details of the \$1,450,000 expense connected with the issue of bonds and notes of this company. Our proposition to Messrs. J. P. Morgan & Co. was to undertake the formation of a syndicate to purchase the \$25,000,000 of notes at 97% of their face value and accrued interest, for which service in forming and managing the same, they were to receive a commission of 2%, which made the price \$5 net, the discount and commission being \$1,250,000. On April 28, 1908, we paid the recording tax upon \$40,000,000 of forty-five year gold mortgage bonds, dated November 1, 1907, the same being 50 cents per \$100, namely, \$200,000; total, \$1,450,000.

Yours very truly,

(Signed) T. P. SHONTS,  
*Chairman*

The chairman, at the direction of the Commission, sent the following letter showing how this expense should be disposed of:

NEW YORK, July 17, 1908.

T P. SHONTS, Esq., *Chairman Executive Committee Interborough Rapid Transit Co., 115 Broadway, New York City:*

DEAR SIR:—Your letters of June 26 and July 8 have been considered by the Commission. The points raised therein will be covered by the system of accounts for street and electric railroads, which is now being formulated, and which will probably be adopted by the Commission in the near future. In the meantime, however, that you may be advised of the attitude of the Commission, I will say that, in view of all the facts, the Commission considers the suggestion made by you to be wise and prudent. In the opinion of the Commission, therefore, a separate account should be kept to cover the following items:

Discounts and commissions upon an issue of notes of a par value of \$25,000,000 .....	\$1,250,000
Recording tax upon a par value of \$40,000,000 of 45 year gold bonds, dated November 1, 1907 .....	200,000
Total .....	<u>\$1,450,000</u>

A sinking fund or an amortization account should also be kept, to show the amounts paid in to the fund year by year, and the total amount to the credit of the fund at the end of each year, including payments thereto and interest paid or accrued. This fund should be sufficient at the end of forty-five years to amount to \$1,450,000, and the annual payments thereto should be sufficient, with interest thereon, to amount to this sum at the end of the period.

Yours very truly,

(Signed) WM. R. WILLCOX,  
*Chairman.*

The system of accounts for street and electric railroads subsequently adopted provides as follows:

"18. Discounts upon securities not to be charged to capital accounts.—Discounts upon securities and other commercial paper issued in payment for capital are to be provided for in other accounts and must in no case be charged to the capital accounts."

"(928.) AMORTIZATION OF DEBT DISCOUNT AND EXPENSE.

"Charge to this account at or before the close of any fiscal period that proportion of the unamortized discount and debt expense on outstanding debt which is applicable to the period. This proportion shall be determined according to a rule, the uniform application of which during the interval between the issue and the maturity of any debt will completely amortize or wipe out the discount at which such debt was issued and the debt expense connected therewith. Such amortization may at the option of the corporation be earlier effected by charging all or any portion of such discount and debt expense to the account (No. 939.) 'Other Deductions from Surplus,' immediately upon issue of the debt or thereafter."

"(930.) OTHER DEDUCTIONS FROM SURPLUS.

"Charge to this account all deductions from surplus because of erroneous accounting in prior fiscal periods, and all other deductions from surplus not elsewhere provided for.

Note.—A complete analysis of this account will be required in annual reports of corporations to the Public Service Commission."

**Long Acre Electric Light and Power Company.—Application for authority to issue \$10,000,000 of preferred stock, and \$50,000,000 of bonds to be secured by a mortgage on its property.**

Hearing Order No. 410.  
 Opinion of Commissioner Maltbie.  
 Final Order No. 607.  
 Rehearing Order No. 750.  
 Final Order No. 797.

In the Matter of the <b>Application of the LONG ACRE ELECTRIC LIGHT AND POWER COMPANY for authority to issue \$10,000,000 of preferred stock, and also to issue \$50,000,000 of bonds to be secured by a mortgage on its property.</b>	ORDER No. 419. April 17, 1908.
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Whereas, the Public Service Commission for the First District has received the petition of the Long Acre Light and Power Company, verified the 1st day of February, 1908, praying

*First.* That the Commission authorize the issue by said company of ten million dollars (\$10,000,000) par value, of preferred stock, the said stock to be noncumulative and nonvoting, with a specified dividend rate of seven (7) per cent.

*Second.* That the Commission authorize the issue by said company of six per cent (6%) bonds to the extent of fifty million dollars (\$50,000,000) of which,

Twelve million dollars (\$12,000,000) are to be issued at the present time, and

The remainder are to be issued as may hereafter be authorized by the Public Service Commission.

*Third.* That the Commission authorize the execution by said company of a mortgage or pledge of all its property to secure the said bonds.

*Resolved,* That the said petition of the said Long Acre Electric Light and Power Company be heard by and before the Public Service Commission for the First District on the 30th day of April, 1908, at 2:30 o'clock in the afternoon, and that the said company publish the following notice of the said application and of the time and place of the said hearing in the following newspapers, namely: The Evening Post and the New York Times, published in the borough of Manhattan, in the city of New York, at least three days in succession before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

Notice is hereby given, that an application and petition of the Long Acre Electric Light and Power Company to the Public Service Commission for the First District, has been made, praying

*First.* That the Commission authorize the issue by said Company of ten million dollars (\$10,000,000) par value, of preferred stock, the said stock to be noncumulative and nonvoting, with a specified dividend rate of seven (7) per cent.

*Second.* That the Commission authorize the issue by said company of six per cent (6%) bonds to the extent of fifty million dollars (\$50,000,000), of which,

Twelve million dollars (\$12,000,000) are to be issued at the present time, and

The remainder are to be issued as may hereafter be authorized by the Public Service Commission.

*Third.* That the Commission authorize the execution by said company of a mortgage or pledge of all its property to secure the said bonds.

And that said application and petition will be heard by the said Commission at its office, No. 154 Nassau street, borough of Manhattan, New York city, on April 30th, 1908, at 2:30 o'clock in the afternoon.

Dated, New York, , 1908.

LONG ACRE ELECTRIC LIGHT AND POWER COMPANY.

By .....

Hearings were held April 20th, May 5th, 8th, 12th, 15th and 23d.

\* [It is not desirable to introduce a competing electric company into the city of New York. The advantages of competition can be secured through the exercise of the powers of the Commission without the disadvantages.

That no certificate to begin construction has been obtained by an electric company and that there is doubt of the legality of the stock and bonds already issued and of its title to the franchise claimed are grounds for denying an application for permission to issue further securities.]

## OPINION OF COMMISSION.

(Adopted June 26, 1908.)

## COMMISSIONER MALTBY:—

This is an application of the Long Acre Electric Light and Power Company, a corporation organized under the laws of the State of New York for authority:

- (1) To issue \$10,000,000, par value, of preferred stock, nonvoting and noncumulative, with a specified dividend rate of seven per cent.;
- (2) To issue six per cent., fifty-year, gold bonds to the extent of \$50,000,000 of which only \$12,000,000 are to be issued at the present time;
- (3) To execute a mortgage of all its property, present and future, to secure these bonds.

The purposes for which it is proposed to issue the stock and present issue of bonds are:

- (1) To retire the present issue of bonds amounting to \$1,000,000;
- (2) To acquire real estate and to erect thereon power houses and substations;
- (3) To provide a system of underground mains, ducts, and service connections;
- (4) To pay "the corporate expenses in the conduct of its business."

The rules of the Commission relative to such applications have been complied with and hearings held at which those who favored and those who opposed the application were heard.

In the general investigation into the affairs of the electric companies in the First District a most exhaustive inquiry was made into the history and present operations of the Long Acre Company. Upon certain points the evidence there taken was supplemented at the hearings on the application. The principal facts brought out by the record are as follows:

## HISTORY OF THE COMPANY.

The Long Acre Electric Light and Power Company was incorporated April 24, 1903, for the purpose of manufacturing, distributing and selling electricity for light, heat and power and with such general powers as would enable it to perform other functions incidental thereto. The area of supply as defined in the original certificate of incorporation was bounded by Fifty-ninth street, Fifth avenue, Thirty-third street and the Hudson river, in the borough of Manhattan. This area was extended by amended certificate upon or about June 7, 1907, to include all of the boroughs of Manhattan and The Bronx.

Until March 22, 1906, the Long Acre Company had no franchise, although it is stated that it applied at one time to the board of aldermen and was refused; but upon that date a franchise was transferred to it which had originally been granted to the American Electric Manufacturing Company by the board of aldermen on May 31, 1887, and approved by the mayor upon June 30th, of the same year. This franchise had passed through several hands. According to the record, it was assigned by the American Electric Manufacturing Company to Mr. Frederick E. Townsend under date of April 18, 1888, for one dollar and other considerations not specified in the assignment. Under date of April 19, 1889, Mr. Townsend assigned the franchise to the American Illuminating Company for one dollar and other considerations not specified.

Upon November 8, 1897, a judgment was obtained against this company. A receiver was thereupon appointed and ordered by the court to sell the franchise at public auction, he having certified that this franchise was the only property belonging to the company that he could find. The franchise was sold for \$100 to Martin Minturn, at public auction by the receiver upon December 4, 1897, and the report of the receiver was confirmed upon October 17, 1898. Apparently no further transfer of the franchise was made until March 21, 1906, as of which date it was assigned by Martin F. Minturn to the Long Acre Electric Light and Power Company.

The franchise is very brief and authorizes the holder to erect poles and hang wires for electrical purposes, subject to supervision of certain city officials within the area of New York city at the time of the grant, viz., the borough of Manhattan and that portion of the borough of the Bronx west of the Bronx river. Nothing

is said as to the duration of the grant, and the only obligations imposed upon the company are to supply and maintain, free of charge, for public lighting, one arc lamp for every fifty furnished to private consumers and also to pay the city a sum equal to one per cent per linear foot of the streets occupied.

#### FINANCIAL CONDITION.

The certificate of incorporation of the company permitted the issuance of capital stock to the extent of \$50,000, but not a share had been issued prior to the purchase of the franchise in 1906. Nothing was said in the certificate as to the amount of bonds to be issued and none had been put out prior to 1906. In March of that year the franchise which stood in the name of Mr. Minturn was offered to the company, and a resolution was passed March 22, 1906, by the board of directors authorizing and directing the issue of 500 shares of capital stock of a par value of \$100 per share, or \$50,000 in all, and of 1,000 four per cent, fifty-year, gold bonds, of \$1,000 each, payable semiannually, or \$1,000,000 in all. One-half of the bonds (par value, \$500,000) were ultimately delivered to certain lawyers, who were said to represent the real owners of the franchise. The stock was issued to the Manhattan Transit Company for negotiating the sale of the franchise. Not one dollar of cash has ever been paid in for the stock or the bonds. Of the remainder of the bonds, \$400,000, par value, are in the treasury of the company; \$100,000, par value, have been deposited with the American and British Manufacturing Company as collateral security for the execution of the contract between that company and the Long Acre Company.

The financial condition of the company upon March 1, 1908, was as follows: There was issued and outstanding \$550,000 of stock and bonds, par value, represented by the franchise and the franchise alone. Bonds to the amount of \$100,000 had also been deposited with the American and British Company as just stated. There were also current liabilities amounting to \$93,325.80, consisting of a demand note in favor of Mr. J. H. Hoadley for \$59,150.80; another demand note in favor of the American and British Manufacturing Company for \$18,000, and various accounts payable, amounting to \$18,175. The only physical property owned by the company is carried on the books as having cost \$16,000, which was paid for by the demand note of the American and British Manufacturing Company just referred to. The company claims to have had upon deposit cash amounting to \$18,010.21. This is really a credit and was obtained by giving the demand note to Mr. Hoadley, above referred to. The accounts payable, amounting to \$18,175, represent \$17,500 for legal expenses and \$675 for rent and salaries. The remaining obligations, being part of the Hoadley note, are represented by the following items:

Interest on bonds (4% on \$500,000).....	\$20,000 00
Office and petty expenses.....	864 85
Engineering expenses upon power plant (15 + per cent).....	2,500 00
Legal expenses .....	11,063 50
Expenses of mortgage and bond issue.....	6,444 43
Organization expenses .....	267 81
	<hr/>
	\$41,140 59

#### ASSETS AND LIABILITIES.

Besides the franchise the company had no intangible property, and its physical property was limited to a few small engines, generators and other apparatus valued by the company at \$16,000 and said to be worth approximately that amount by the electrical engineer of the Commission. These were located upon the premises, at East Forty-seventh street, near Second avenue, of the Manhattan Transit Company, which controls the Long Acre Company, through the ownership of 490 shares out of 500. The Long Acre Company owned no real estate or buildings, and so far as ascertained had paid no money for options upon or part interests in any other property. The plant was purchased in December, 1907, and can be connected with six buildings upon Second avenue, between Forty-seventh and Forty-eighth streets. Upon March 12, 1908, it was supplying only one customer — the Manhattan Transit Company, upon whose premises the plant was located. It has leased a through

## 142 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

duct upon Second avenue, extending from Forty-second street to Forty-eighth street. The only portion now being used is from Forty-seventh to Forty-eighth streets.

The only agreement outstanding of which there is any record is an agreement with the American and British Manufacturing Company, relating to the construction of a big power station and distribution system, for which the company asks authority to issue securities. According to this document, the Long Acre Company has agreed:

(1) To pay the net cost of all apparatus, materials and work provided by the American and British Company, as shown by vouchers approved by the general engineer of the Long Acre Company.

(2) To pay *all the expenses* of the A. & B. Co. for engineering, superintendence and employees used upon the work.

(3) To pay, in addition to the above items, 15 per cent as a clear profit to the A. & B. Co.,

(4) To make payment by the 10th of each month for the materials, labor, etc., furnished during the preceding month,

(5) To make such payments in notes providing for the public or private sale of bonds which are held as collateral,

(6) To keep upon deposit with the A. & B. Co. approximately \$100,000 in bonds above the amount due at any time.

The American and British Company, under the contract:

(1) May sell the \$400,000 of bonds now in the treasury of the Long Acre Company at 70 per cent of par value;

(2) May sell subsequent issues for "a fair market value;"

(3) Shall receive 5 per cent commission upon (1) and (2);

(4) Shall continue to own all materials, apparatus, etc., furnished until paid for;

(5) May sublet this contract in whole or in part, and the amount paid to the subcontractor under this subcontract shall be taken as the cost upon which the profit of 15 per cent. to be paid to the A. & B. Co. is to be computed.

If the Commission should grant the application of the company, the proceeds from the sale of the stock and bonds would be expended according to the above provisions.

### DOES SECTION 68 APPLY?

As the Long Acre Company was not supplying current when the Public Service Commissions Law became a statute, June 6, 1907, one of the first questions raised by the application is whether the company should not have obtained a certificate under section 68 of the statute. This section provides:

"No gas corporation or electrical corporation incorporated under the laws of this or any other state *shall begin construction*, or exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised without first having obtained the permission and approval of the proper commission \* \* \*."

The Long Acre Company admits that it had not begun construction prior to June 6, 1907, but claims that a certificate under this section is not necessary because the franchise under which it wishes to operate had been exercised prior to the enactment of the law—some seventeen or eighteen years ago. Considerable testimony was presented in the general investigation to show that current was supplied to a number of consumers by the American Electric Illuminating Company from 1880 to 1890. It has been asserted by those opposed to the granting of the application that the Long Acre Company did not supply current, at that time nor at any time, but the evidence presented seems to support the contention of the Long Acre Company.

The question resolves itself, therefore, into an interpretation of the statute. Does the law provide that a corporation shall secure a permit to begin construction as distinguished from permission to operate under a franchise? Or, applying it to the present case, does the statute require that the Long Acre Company should have secured permission to begin construction, notwithstanding the fact that another company had operated under the franchise many years ago?

In the first place, there is no question but that the Long Acre Company is an electrical corporation under the law, and that it has obtained no certificate to

begin construction. The only ways in which the statute may be so construed as to relieve the company from this requirement are two: Either to hold that the words, "begin construction," refer to the same act as "exercise any right or privilege under a franchise \* \* \*"; or to construe the phrase "begin construction," as applicable only to such corporations as are to operate under franchises which have never been exercised.

Neither position seems to me tenable. Two distinct acts are contemplated by the statute: To begin construction, and to exercise a right under a franchise. A company might have a right under a franchise which would not involve construction. Hence, the two expressions ought not to be considered synonymous or interchangeable. This conclusion will appear the more natural when one reads the remainder of the section containing a prohibition against municipal construction and operation, except with the approval of the Commission, and also section 53 of the Act and section 59 of the Railroad Law, where the distinction between a certificate of public necessity and convenience and one permitting the exercise of a franchise is clearly drawn.

As to the second point, I can see no logical grounds for holding that the phrase, "under any franchise heretofore granted but not heretofore actually exercised," modifies "shall begin construction." It is clear, I believe, that it is co-ordinate with "under any franchise hereafter granted" and modifies "or exercise any right or privilege."

#### LEGALITY OF SECURITIES.

The question as to the legality of the stocks and bonds already issued arises in this way. The company had issued no stock or bonds prior to the passage in 1905, of the law creating the Commission of Gas and Electricity although the Certificate of Incorporation of the company made provision for \$50,000 of stock. One of the provisions of the act was:

"Section 12. Stock or bonds shall not be issued by any corporation hereafter incorporated which is subject to the supervision of the Commission, until the certificate of authority has been issued as required in the preceding section, and until such Commission shall further certify, in writing as to the amount of stock or bonds reasonably required for the purposes of the corporation. Stock and bonds of such corporation shall not be issued in excess of the amount so certified. Any such corporation heretofore or hereafter incorporated shall not increase its capital stock or its bonded indebtedness without the consent in writing of such Commission, stating the amount of the authorized increase."

As the Long Acre Company was incorporated prior to the enactment of the law, the question involves an interpretation of the last sentence only. The matter has been most carefully investigated by the Counsel to the Commission, and in his opinion there is grave doubt whether the stock and bonds of the company have been legally issued, not having been approved under the act of 1905 by the Commission of Gas and Electricity. To reach the conclusion that the Commission's approval was not necessary, one is forced so to construe the statute of 1905 as to permit a company incorporated prior to the passage of the law to put an initial issue of stock and of bonds without any approval whatever. If this construction be the correct one, any such company could have evaded the law so far as its own operations were concerned by making the initial issue so large that the amount raised thereby would have sufficed for a generation. It seems clear that the Legislature did not intend to provide such a loop-hole through which a few corporations could escape the supervision which was so carefully provided for all other corporations. The most natural construction is that the Legislature intended to require all gas and electric corporations to go to the Commission for the approval of all stock and bond issues. The word "increase" is, in my opinion, intended to cover the point where a corporation had already issued stocks or bonds and to provide that stocks and bonds once issued need not be submitted to the Commission of Gas and Electricity for approval, but that all future issues whether "increases" or original issues should be approved by the Commission.

If this is the proper interpretation of the Act of 1905, there was a legal, certainly a moral, duty upon the Long Acre Company to apply to the Commission of Gas and Electricity for the approval of the stock and bonds issued in 1906 and 1907. So far as I have been able to learn no other corporation has relied upon the narrow interpretation of the statute above referred to; and there have been cases exactly similar to that of the Long Acre Company and others where approval has been asked for an initial issue. The Commission of Gas and Electricity called the attention of the Long Acre Company to the issuance of securities without its approval, and proposed that if there were any question regarding the jurisdiction of the Commission, the matter should be referred to the Attorney-General for an opinion. The Commission did this early in 1907, immediately after the issuance of the bonds, but as the Long Acre Company would not give the information requested, no opinion was secured from the Attorney-General.

#### TITLE TO THE FRANCHISE.

If the stock and bonds of the Long Acre Company have not been lawfully issued, and at best there is grave doubt as to their legality, two questions naturally arise: First, has the Long Acre Company a clear title to an electric lighting franchise, \$550,000 in stock and bonds having been issued for the franchise; second, should the present bonds be legalized by the permission of this Commission to substitute therefor securities from the new issue?

As to the former, it would seem that the title to the franchise will remain with the company until some affirmative action shall be taken successfully to divest it of the title, and no such action has yet been taken. Another question as to the validity of the title was raised by those opposing the application. It was claimed that Martin F. Minturn who sold the franchise to the Long Acre Company, did not own the franchise himself but held it as trustee for two other persons.

A claim to a one-half interest in this franchise was made at the hearing on behalf of a company claiming through one of these two persons. It appears also that there is on record in the County Clerk's office of the County of New York in Liber 13 of General Mortgages, pages 310-320, a mortgage covering this claimant's interest in this franchise, which mortgage was recorded May 24, 1905.

The Long Acre Company denied all knowledge of these assertions. The subject was not completely covered by the evidence, for, in my opinion, the question of title is one to be decided by the courts and not by this Commission. I, therefore, refused to subpoena witnesses desired by those opposing the application, and I have since been informed that a suit is to be brought to test title in the courts.

It is a serious question, however, whether several millions of securities should be stamped with the approval of this Commission when a question has been raised as to the validity of the sale and as to the legality of the transfer by which the franchise came into possession of the company. Innocent purchasers of these securities naturally assume that approval by this Commission would not have been given as long as there was any doubt as to such fundamental matters and that every precaution had been taken to leave no doubt as to the security of the issue.

#### CAPITALIZATION OF FRANCHISES.

It is doubtful, further, whether this Commission has authority to approve an issue of securities part of which is to be issued to replace bonds of questionable legality which were originally issued in payment for a franchise. Section 69 of the Public Service Commissions Law specifically states:

\* \* \* "The Commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right."

The Long Acre Company proposes to use \$500,000 of the new bonds to replace same amount issued to private parties for the franchise. This would be in effect a capitalization of the franchise, which is forbidden by law.

There are several other features of the application to which attention should be called. The new issue of stock (\$10,000,000 par value) is to be non-voting, preferred stock. As a result the affairs of the corporation will be controlled by the holders of a majority of the stock now outstanding. This means that the owners of 261 shares, the total number being 500, having a par value of \$25,100 will control a corporation with over \$80,000,000 of security. As 490 out of 500 shares are now owned by the Manhattan Transit Company and were issued without one dollar having been received in return, the Manhattan Transit Company controls the Long Acre Company, and unless it sells its interest before the money obtained from the issue of \$80,000,000 of securities is invested, the management and control of this large corporation will be in the hands of another corporation which has not invested any money.

An agreement had already been entered into before this application was made for the expenditure of the money to be raised by the sale of securities. Under this contract, with a company closely allied to the Long Acre Company and the Manhattan Transit Company, it would be possible for a large amount of "water" to be infused into the capitalization, and in my opinion the interests of the Long Acre Company have not been adequately protected. The contracting company has also been given certain rights regarding the sale of securities which are not considered proper.

#### WOULD COMPETITION BE ADVANTAGEOUS?

From the above facts, it appears that up to the present moment, the Long Acre Company has never obtained, directly or indirectly, the sanction of this Commission or of its predecessor to any of its operations. Whatever it has done in the way of issuing securities and of constructing a plant has been done, we must assume, at its own risk. That the company has issued \$850,000 in securities and has machinery worth about \$16,000 may not be cited under such circumstances as a reason for the issuance of more securities. This point should be emphasized, for if this Commission or its predecessor had directly or indirectly in any way given its approval to any act of the company or in any way had encouraged it to begin operation, certain matters about to be considered might not be germane. But as no such approval or permission has been given directly or indirectly, there is a much broader question to be considered than has heretofore been indicated, viz., whether it would be advantageous to the city of New York, to the taxpayers and to the consumers of electric light to permit a new company to supply electricity for light, heat and power in the borough of Manhattan.

One would naturally expect in view of the disappointing experience which New York City has had in its attempt to preserve competition in the electrical field, that the applicant would have produced data to show the deficiencies of the present companies. Only four points were touched upon and these not very fully.

The applicant produced evidence to show that in certain sections of the city many buildings were not wired for electric lighting or connected with the mains. When questioned as to the method by which the Long Acre Company proposed to change this condition, the engineer of the company stated that a wiring company was to be formed whose function it would be to induce owners to install electric connections. It was stated, however, that this company would have no connection whatever with the Long Acre Company; that the Long Acre Company did not intend to do any wiring itself, and that the wiring company expected to conduct its business like any wiring concern. As there are some 1,500 electrical contractors who are constantly canvassing for work, it does not seem likely that the addition of one company quite independent of the Long Acre Company would change the situation. Further, there is nothing in the application to guarantee that such a company would be formed if the application were granted.

Another point made was that not all the streets are supplied with mains and that the introduction of a new company would stimulate competition in

this direction. There are at present about 456 miles of streets in the borough of Manhattan, of which 393 are "built up." Of this number 321 are supplied with electric service, and with the exception of last year about 50 miles of street mains have been added each year for four years. The two companies now in the field claim to make connections upon liberal terms and as yet the Commission has received no complaints in this direction. The companies have been given to understand that if a complaint should be made, the Commission would expect them to provide service connections wherever reasonably necessary.

The applicant also urged that the Long Acre Company intended to introduce a lamp of much higher efficiency than the carbon filament lamp now in general use. Upon inquiry it developed that the proposed lamp is not yet in commercial use and has not become available outside of the laboratory. Indeed, there is still a question whether it will ever be so perfected as to be generally acceptable. But as the Long Acre Company admits that it does not intend to supply these lamps free, that it does not own or control the patent, and that it has no rights which any other company might not secure, it would be perfectly possible for the present companies to put the same lamp into use. The existence of such a lamp and the possibility that the Long Acre Company might use it do not, in my opinion, constitute a strong argument. This Commission has power to compel the existing companies to provide any lamp of higher efficiency than those in use, which is a more effective means than mere competition. The companies have recently agreed to supply the most efficient lamps now upon the market.

Another argument related to the price at which current would be supplied. The engineer of the company stated that they expected to supply current at eight cents per K. W. H. without lamp renewals, which is fully one cent below what the Manhattan companies are now charging. There is, however, nothing in the franchise to guarantee that a larger sum will never be asked, and the statement must be taken as merely an expression of intention. Further, if eight or nine cents for current only is a reasonable charge and one which a company can afford to maintain, this Commission has power to fix that rate as the proper charge.

#### COMPETITION ONLY TEMPORARY.

Reference was frequently made in the testimony to the indirect benefits which would come from the introduction of competition through the stimulus thereby provided to induce each company to give the best service at the lowest price in order to keep its present consumers and to obtain others. Undoubtedly this is one of the advantages of competition in any field, but the question at once arises, how long would there continue to be competition in case the Long Acre Company were authorized to issue its securities? In reply to questions upon this point, the representatives of the company admitted that there was no known method whereby combination in one form or another could be prevented—nothing to prevent the same interests from securing control of the Long Acre Company that now control the Edison and the United companies. Under the Public Service Commissions Law a franchise cannot now be transferred without the approval of this Commission, and one company cannot hold the stock of another company without similar approval; but there is nothing to prevent, and there is apparently no legal way of preventing, the stockholders of one company from purchasing stock in another and thus bringing the two companies under one control, virtually, although upon the surface they may be independent and competitors. If there were some way by which the independence of the Long Acre Company could be guaranteed and competition preserved, something might be said in favor of the introduction of a new company, but as a matter of fact the situation is such as to make combination most easy. As the new stock (\$10,000,000) is to be non-voting, this \$60,000,000 corporation may be controlled by 251 shares of stock (\$25.100.) As 490 shares out of the 500 are owned by the Manhattan Transit Company, a transfer of this controlling interest would be the simplest thing possible.

The whole electric history of New York city points the futility of competition. In the early years of the industry numerous companies were organized. From

time to time they were absorbed, only to be followed by new companies frequently encouraged by the city with the idea that competition was the life of trade and that the more competition there was the better would be conditions. But the same procedure occurred again and again. The new companies were merged or swallowed up, until at the present time there are but two electric supply companies operating in Manhattan, and these two companies, although nominally independent, are owned and controlled by the Consolidated Gas Company.

The history of New York city has been duplicated in nearly every large city in the United States and in most of those in Europe, until at the present time there are few cities where there is genuine competition or where a customer who is dissatisfied with the service or the rates of one company may discontinue the service of that company and connect with another. Either the companies have been merged or consolidated, or the city has been apportioned among those still in existence so that even in the few instances where there is apparent competition in theory, there is in practice little real competition. This tendency is coming to be recognized as almost inevitable and the many methods which at first were used to prevent it are being abandoned not only as futile but as detrimental to the best interests of the public. It is coming to be generally recognized that monopoly control of electric light, heat and power may be very beneficial to the public if the one company or the few non-competing companies can be placed under such public regulation and control as will secure for the public a fair share in the many benefits arising from unified management. That competition cannot be depended upon to protect the consumer from high prices and poor service has been fully demonstrated.

#### THE ADVANTAGES OF UNITED CONTROL.

But putting to one side for the moment the question of how a fair share of these benefits is to be obtained for the public, let us ascertain in what they consist. In the first place, the existence of competing companies necessitates constant opening of the streets to provide service connections to the houses and street mains for the distributing wires. It is axiomatic that if there is but one company in an area, there will be but one service to a building ordinarily and but one system of street mains. If there are several companies, more than one service must be provided whenever a customer changes from one company to another, and duplicate distributing systems must be provided wherever there is real competition. To provide and maintain these additional services and mains means more frequent opening of the streets, more injury to pavements and ultimately more expense to the taxpayers—conditions which the public has been urging should be removed or reduced and not increased.

Competition also involves duplication of generating plants and substations. Each company must provide sufficient plant not merely to supply the peak of the load but to meet any accident which may occur. Machinery must at all times be held in reserve, and when there are several independent companies, no one of which may take a momentary advantage of the reserve of the other, they all must maintain reserves very much in excess of what one company must keep where it may fall back upon any and all of its stations to meet a failure at one of them. Again, it is well known that one company can generate current for the whole of Manhattan much more cheaply than can several companies each one of which undertakes to supply the entire borough. Further, the loss due to distribution is larger where there are several systems.

The result of such duplication of capital and the less economical methods of production and distribution is that the cost of delivering current to the consumer is larger under competition than under efficient monopoly. It may be and often has been true that competition has temporarily lowered rates and improved service, but this does not controvert the statement that the cost to one company of current is less than the cost to several. Competition has forced price nearer to or below cost for the moment, but every one knows that when the rate war has ceased, due to agreement or merger, prices have gone up and the consumer ultimately has paid the bill and has continued to pay interest and dividends upon duplicate capital unless the State has stepped in.

Indeed, the existence of duplicate plants and wires in such a case is almost always urged as a reason for higher charges when the State attempts to fix lower rates. The company asserts that it should be allowed a fair return upon its property as it stands notwithstanding the fact that some of it may be unnecessary, for the public permitted competition and duplication of plants, perhaps even invited them; hence the company should not be punished for the mistakes of the public. Whether this is sound logic or not, the fact remains that the existence of duplicate plants is a serious obstacle in many cities to the reduction of charges, and in my opinion, the rates for electric current would be lower in Manhattan to-day than they are if it were not for the fact that the two companies are overloaded with an inheritance from the period of competition. Is it wise to continue this process by authorizing the issue of \$60,000,000 of securities and thereby add this amount to the amount already carried by the consumer? Even the representatives of the Long Acre Company admitted that competition would be only a temporary expedient, that combination might follow and that then still another company with its large capital and duplicate plant would be necessary if the competition theory is correct.

#### PUBLIC CONTROL PREFERABLE TO COMPETITION.

Assuming that unified control of electricity supply in a large area *may* result in better service at lower rates than under competition, the big problems for every community are: How may the public be assured that the corporation *will* conduct its business wisely and economically; and how may the public obtain its fair share of the benefits which accrue from monopoly? To depend upon the corporation itself has been shown by experience to be unwise. Competition, which protects the public in ordinary pursuits, is inoperative as it has been eliminated. The only general method that has been productive of good results as long as the undertaking is in private hands is public regulation and control. Are the powers of the Public Service Commission adequate to protect the public without the introduction of a competing company in Manhattan?

The Long Acre Company says it may use a more efficient lamp than the carbon filament lamp. This Commission has power to compel the present companies to do so, and they have already agreed to supply the most efficient types commercially available. The Long Acre Company says it intends to supply current at eight cents per K. W. H. without lamps. This Commission has power to order a reduction of rates subject only to the provision that they may not be made confiscatory, and no company can supply current at a lower rate for any considerable period. If eight cents will allow a fair profit, this Commission can fix an eight-cent rate for the present companies upon the filing of a complaint in proper form. This Commission also has power to order improvements in the manufacture and distribution of electricity and in the plant and equipment, to regulate the methods of supply and to have general supervision of all electrical corporations. If there is anything advantageous to the consumer which the competition of the Long Acre Company will even temporarily produce that cannot be brought about by this Commission under the Public Service Commissions Law, the company has not called attention to it. Further, if experience should develop any weaknesses in the law whereby the companies escape doing what the Commission considers proper, it is believed that the Legislature will confer still other powers.

In my opinion it would be very unfortunate for this Commission, at the very beginning of its work, before it has been demonstrated that public regulation and control is not an adequate substitute for competition and when the experience of other States and other countries strongly indicates that it is a decided improvement over competition, to authorize the issuance of \$60,000,000 in securities and thus allow another company to enter the electrical field in Manhattan. If the evidence presented had shown that the present companies were not properly serving the public, that a new company would do so and that the same results could not be seized by this Commission, it might be necessary in such a case to authorize a new company to come in. But the applicant did not produce sufficient evidence to establish these conclusions. Of course, the decision in this case upon the facts presented by the evidence, does not bind the Commission to a like decision in other cases. In other words, it must not be assumed that the refusal

to sanction competition in this case indicates that it will never be permitted. Upon the contrary, one may easily imagine a series of circumstances where a competing electrical company would be a necessity. Much depends upon the attitude of the present companies toward the public and this Commission. If they should adopt a policy of hostility and interference, it might become necessary to permit another company to enter the field.

As the questions raised by this application are of great importance, and as they have been considered by state commissions and the courts in this and other states, I have appended hereto excerpts from several cases which show that the conclusions reached in this opinion have been adopted elsewhere.

In conclusion, I recommend that the application be denied for the following reasons:

1. No certificate to begin construction has been obtained from this Commission or its predecessor, the Commission of Gas and Electricity.
2. It is probable that the bonds already issued are illegal and there is grave doubt of the legality of the stock, neither issue having been approved by the Commission of Gas and Electricity.
3. It is doubtful whether the title of the Long Acre Company to the franchise which it claims is perfect.
4. If the bonds already issued are illegal, the approval of the application would authorize the capitalization of a franchise, which is contrary to law.
5. The amount of bonds of the new issue is very much too large as compared with the amount of voting stock.
6. The construction contract does not adequately protect the interests of the Long Acre Company or of the public.
7. The applicant has not proved that the existing companies are not properly conserving the public interest and convenience and that it would be to the advantage of the community to have a new company authorized to enter the field.
8. If a competing company were allowed to begin operation, it is not likely that it would continue to operate independently for any considerable period.
9. Competition would cause inconvenience and expense to the public, would cause duplication of plant, would lead to waste and ultimately be urged as a reason why rates should not be reduced to consumers.
10. Practically all of the advantages claimed by the applicant as to the probable results of competition can be secured through the powers of this Commission, and until it has been demonstrated that these are ineffective, it would be unwise to adopt a method which has proved to be ineffective in the past.

I recommend that an order denying the application be adopted accordingly.

#### APPENDIX.

##### WISCONSIN RAILROAD COMMISSION.

An extract from the decision of the Railroad Commission of Wisconsin "In the matter of the application of the La Crosse Gas and Electric Company \* \* \* 1907":

"Duplications (sic.) of such plants is a waste of capital, whenever the services can be adequately furnished by one plant only. If necessarily means that interest and maintenance must be earned on a much greater, if not twice as great, an investment and that the actual cost of operation is likely to be relatively higher. Competition in this service therefore usually means a bitter struggle and low rates, until one of the contestants is forced out of the field, when the rates are raised to the old level if not above it, or to a combination or understanding of some sort between them which also ultimately results in higher rates. In this why it often happens that the means which were thought to be the preventative of onerous conditions become the very agents through which such conditions are imposed. In fact active and continuous competition between public utility corporations, furnishing the same service to same locality seems to be out of the question. This has been shown by experience. Such competition is also contrary to the very nature of things. Two distinct and separate corporations are not likely to remain separate very long after it becomes clear that the services rendered by both can be more cheaply and more effectively furnished by only one of them."

## MASSACHUSETTS BOARD OF GAS AND ELECTRIC LIGHT COMMISSIONERS.

In 1893 the City of Worcester granted a franchise to a new company. An appeal was taken from this action by the existing company to the State Board, which sustained the appeal and annulled the franchise. In their decision (Report for 1894) the Board says:

"The evidence as presented to the Board seems to afford no reasonable ground for the expectation that the proposed company could afford its lights for less than the existing company \* \* \*. It does not possess and probably does not expect to acquire the exclusive control of any invention by which special saving in cost may be effected, and it cannot reasonably be expected to possess any higher technical or business talent than lies within the reach of the existing company."

"It is the duty of the Board and its only purpose to secure to the people of Worcester, so far as it lies within its power, the best service at the lowest reasonable price. There is some reason to believe that the admission of the proposed company might seriously impede, perhaps wholly defeat, this object. It must be recognized that both companies are to be promoted and to be conducted for the sake of profit, and that they will be governed by the same laws as other companies in similar business. \* \* \*. The history of corporations doing an electric lighting and similar business in competition in various parts of the country affords strong ground for believing that a new company, if allowed to engage in business, would not long remain by itself, as competition for a period would probably be followed, as elsewhere, by consolidation or absorption. \* \* \*. But combinations and consolidations, as is well known, afford the opportunity and usually a temptation to stock development too great to be resisted. Such needless outlay should be avoided and saved, for when it has once been incurred or the money expended in an enterprise not required to supply the public wants, so great is the expectation of gain, and so persistent and unyielding the demands of capital for dividends, the remedy is not then easily found or applied, and the better policy avoids the evil at the outset by preventing the expenditure. \* \* \*

"If to sustain this appeal shall seem to secure to the existing company a monopoly of the business, it must be remembered that it can only retain this as long as the public interest is best served thereby, and that such monopoly is conditional and restricted. The company claims and exercises a general franchise throughout the city. It may be compelled to meet all reasonable demands. If it unreasonably fails or neglects to supply light when requested, this Board has power to compel such supply and has frequently exercised this authority in other localities. Consumers have a right to the lowest remunerative rates, and if they believe the prices charged are too high they can petition for a reduction, and the order of the Board as to price is binding upon the company. While the interests of the share-holders, present or prospective, ought not to be overlooked, the convenience, comfort and pecuniary benefit to the community are surely of the first importance."

In a similar case in Haverhill the Board reached the same conclusion and said (Report for 1904):

"Experience shows that the exploitation of a new company in a territory already occupied does not necessarily depend for its financial success upon the sale of electricity to the city and its citizens. That is by no means the only source of profit to such company. It has been repeatedly demonstrated that the profits of a new concern do not so much depend upon its dealings with the public as upon the relations which it may be able to establish with the company first in the field.

"If the request of the new company be granted, it may naturally be expected that for a time both city and commercial lighting will be offered by both companies at considerably less than present rates, but such competition, under the conditions in this case, is sure to be expensive, even though for a time apparently economical or profitable. We may confidently expect, first losses, then profits; losses in the conduct of the business and the struggle for a control of the situation; profits in the later union or consolidation; losses for a time in the supply of electricity to be converted later into new capitalization as a perpetual and irremedial burden on the public. The temporary advantage to a portion of the public is reasonably sure to be followed by an undue burden upon the public

as a whole, through the larger capital demanding a return, much of it representing unnecessary duplication of properties as well as losses. \* \* \*

"The action of the Board upon this case is not to be taken as a refusal to admit of competition under all circumstances, nor as an endorsement or approval of the prices offered by the existing company or of all the doings and policy of its management. It is the duty of this company to serve all its customers at prices at the lowest reasonable point, and to manage its business with such zeal, economy and enterprise as shall enable it to give the best possible service to the greatest number at the lowest cost. If it shall fail in this duty the Legislature has provided the methods by which its fulfillment may be secured, with an apparent purpose to avoid, if possible, the expensive and burdensome results so sure to follow such competition as was proposed in this case. The Board has ample authority, upon the petition of the mayor or a limited number of customers, to thoroughly investigate all the company's affairs, and make such orders as the public interest may require."

A recent decision of the Board along the same lines was taken into the courts and in the early part of this year the Supreme Court of Massachusetts handed down an opinion in the case of *Weld v. Gas and Electric Light Commissioners* upholding the decision of the Commission. The court said:

"The fundamental principles, relied on by the petitioner as applicable to corporations of this general class, are well established. But the laws of this Commonwealth in regard to gas and electric lighting companies and the facts of this case give rise to considerations very different from those which induced the decisions in many of the cases above cited. In the first place, in reference to this department of public service, we have adopted, in this state legislative regulation and control as our reliance against the evil effects of monopoly rather than competitive action between two or more corporations, where such competition will greatly increase the aggregate cost of supplying the needs of the public, and perhaps cause other serious inconveniences. \* \* \* The state, through the regularly constituted authorities, has taken complete control of these corporations so far as is necessary to prevent the abuses of monopoly. Our statutes are founded on the assumption that, to have two or more competing companies running lines of gas pipe and conduits for electric wires through the same street would often greatly increase the necessary cost of furnishing light, as well as cause great inconvenience to the public and to individuals from the unnecessary digging up of the streets from time to time, and the interference with pavements, street railway tracks, water pipes and other structures."

#### NEW YORK APPELLATE DIVISION, SUPREME COURT.

In a recent case in New York state the Appellate Division has recognized the same theory and has interpreted the action of the Legislature in establishing state commissions as follows (See the N. Y. Law Journal for April 2, 1908):

"It is the settled policy of the State to discourage competition of this character and the reasons for the adoption of this policy have been clearly stated by the Court of Appeals (People ex. rel. N. Y. Electric Lines Company v. Ellison, 188 N. Y. 523). By section 11 of the Gas and Electric Commission Act of 1905 (chap. 737 of the Laws of 1905) it was provided that no corporation for the manufacture and supply of gas should exercise its power without first obtaining a certificate of authority from the commission, and the commission was authorized to withhold its certificate 'if the territory within which such corporation proposes to operate is already supplied by an ample and well constructed system, furnishing the service which such corporation proposes to furnish at a fair and reasonable rate,' and while the act containing this provision has been superseded and repealed by the Public Service Commissions Law (chap. 429, Laws of 1907), that act continued the prohibition of the exercise of its powers by any gas or electrical corporation until it shall first have obtained the permission and approval of the proper commission provided for by the act. \* \* \*

"As has already been shown, the power which the State retains and has exercised to fix a reasonable price upon the commodity, and to compel its de-

livery to any person desiring to purchase it, removes any danger of the especial vice which attaches to monopolies in other articles in common use, and, as has also been shown, the consolidation of control brought about by the purchases of stock complained of does not in any proper sense create such a monopoly as the common law and our statutes condemn."

## NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

The attitude of the Public Service Commission for the Second District is reflected by the decision in the application of the Lockport electric companies for permission to consolidate and issue bonds:

"A business which supplies to a community a public utility like gas, or electricity for light or power, is one in which free and full competition between two companies engaged in the same business cannot be expected to prevail permanently. Experience has, we think, amply demonstrated the fact that when there is more than one such company in a municipality engaged in the same business, while active competition may prevail for a more or less brief period, the companies generally find it to their interest to reach an understanding either as to prices or division of territory, and in the great majority of cases the two companies either become one or the control of both passes into the hands of the same parties. It can doubtless be demonstrated beyond any possibility of successful contradiction that better service and fairer prices in furnishing such public utilities to a community can, as a general rule, be given by one corporation than by several, and that this can be done with the use of less capital. The existence of more than one corporation furnishing the same public utility leads, for a time at least, to duplicate development, to the building of plants which are not needed to serve the community, to the duplication of unsightly and expensive pole lines and distributing service, to costly and unnecessary tearing up and destruction of pavements, to administrative expenses greatly in excess of those which a single company would have to meet, and to increased leakage of gas or electric current. Undoubtedly municipalities have many times enjoyed periods of better service and lower prices by reason of temporary competition prevailing between two or more companies in the same field. After the almost inevitable consolidation, understanding or division of territory, however, the service often becomes poor, and prices are raised in an effort to make the city and its inhabitants bear the burden involved in paying returns on the unnecessary capital invested in the duplicated plants. It is our belief that the provisions of the Public Service Commissions Law show a full appreciation of these facts by the Legislature of the State. \* \* \*

Thereupon the following final order was issued:

## ORDER No. 607.

June 26, 1908.

Whereas Long Acre Electric Light and Power Company filed with the Public Service Commission for the First District its petition verified the 1st day of February, 1908, praying,

First—That the Commission authorize the issue by said company of ten million dollars (\$10,000,000) par value, of preferred stock, the said stock to be non-cumulative and non-voting, with a specified dividend rate of seven (7) per cent;

Second—That the Commission authorize the issue by said company of six (6) per cent bonds to the extent of fifty million dollars (\$50,000,000) of which

Twelve million dollars (\$12,000,000) were to be issued at the present time, and The remainder were to be issued as might hereafter be authorized by the Public Service Commission;

Third—That the Commission authorize the execution by said company of a mortgage or pledge of all its property to secure the said bonds, and

Whereas the said Public Service Commission did thereupon by Order No. 419, dated April 17, 1908, direct the said petition to be heard on Thursday, April 30th, at 2:30 in the afternoon, and that the petitioner publish a notice of the said application and of the time and place of the said hearing, in the manner and as provided in said order, and the petitioner did thereupon cause notice of said application and of the time and place of said hearing to be published

# ORDERS OF THE COMMISSION ISSUED IN 1908.

153

in pursuance of such order, and did file proof thereof with the Commission at the time of hearing said petition, and

Whereas the matter coming on to be heard on said April 30, 1908, and said petitioner having duly appeared by Messrs. Graham & L'Amoreaux, its counsel, and there having appeared in opposition to the granting of such petition the New York Edison Company by Messrs. Beardsley & Hemmens, its counsel, Mr. George E. Corey by Frank D. Allen, Esq., Mr. J. J. Moore by Sterling Person, Esq., the Anti-Monopoly Light and Power Company by Alfred J. Talley, Esq., James McNaboe, Esq., and George B. Hayes, Esq., and the petitioner having submitted proofs in support of said application and the hearing having been adjourned from time to time and the Commission having taken the testimony, and having examined witnesses, books and records, and being advised in the premises, it is hereby

*Ordered:* That the foregoing application of the Long Acre Electric Light and Power Company, verified February 1, 1908, be and the same hereby is denied.

Upon application of the company the following rehearing order was issued:

## REHEARING ORDER No. 750.

September 20, 1908.

An order No. 607, having been made on or about June 26, 1908, in the above entitled matter denying said application;

And the said Long Acre Electric Light and Power Company having applied by petition, verified September 17, 1908, to this Commission for a rehearing, and sufficient reason for said rehearing being made to appear,

*Ordered:* That a rehearing, upon the matters contained in said Order No. 607 be held on the 12th day of October, 1908, at 11 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and state of New York, to determine after such rehearing whether the original Order No. 607 should in any respect be abrogated, changed or modified, and if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of such changes or modifications of the said order.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered:* That the said Long Acre Electric Light and Power Company have at least ten days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing the said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid; and it is

*Further Ordered:* That the said company publish a notice, hereafter to be given, of the said application for a rehearing and of the time and place of the said rehearing in the following newspapers, namely: Times and Post, published in the borough of Manhattan, in the city of New York, at least three days in succession before said hearing, and file proof of such publication with the secretary of this Commission on or before the opening of the said hearing.

Hearings were held October 12th, 14th and 17th.

Thereupon the following final order was issued:

## ORDER No. 797.

October 23, 1908.

Whereas Long Acre Electric Light and Power Company, by a petition verified September 17, 1908, prayed for a rehearing and reconsideration of the case, and that Order No. 607, denying petitioner's original application, be vacated and in place thereof an order made granting the prayer of the petitioner contained in its original application as modified by its petition for a rehearing, verified September 17, 1908; and

Whereas the Public Service Commission, by Order No. 750, adopted September 29, 1908, ordered that a rehearing upon the matters contained in said Order No. 607 be held on the 12th day of October, 1908, at eleven o'clock in the forenoon, to determine after such rehearing whether the original Order No. 607 should be abrogated or modified; and that at such hearing the company should be afforded all reasonable opportunity to present evidence and examine and cross-examine witnesses as to the matters contained in said Order No. 607; and

Whereas the matter came on to be heard on October 12, 1908; and sessions having been held before Mlio R. Malbile, commissioner, on said October 12, 1908, and thereafter by adjournment on October 14 and 17, 1908; and Albert H. Walker, Esq., having appeared for the Public Service Commission; and said petitioner having appeared by J. S. L'Amoreaux, Esq., and Henry W. King, Esq., its counsel; and the Long Acre Electric Light and Power Company bondholders having appeared by A. J. Dittenhofer, Esq., of counsel; and there having appeared in opposition to the granting of the application the Anti-Monopoly Light and Power Company, by George B. Hayes, Esq., its counsel, and certain interested

parties by Alfred J. Talley, Esq., counsel; and all the evidence offered in support of the application having been duly taken, and arguments having been duly heard, and the matter having been duly considered, it is

*Ordered:* That the prayer in the petition of the Long Acre Electric Light and Power Company, verified September 17, 1908, that Order No. 607 denying petitioner's application verified February 1, 1908, be vacated and set aside and in place thereof an order be made granting the prayer of the petitioner set out in its original petition, as modified, be and the same hereby is denied.

**Manhattan Railway Company.— Application for authority to issue \$10,818,000 of bonds.**

Hearing Order No. 501.  
Opinion of Chairman Willcox.  
Final Order No. 572.

In the Matter  
of the

Application of the MANHATTAN RAILWAY COMPANY for leave to issue bonds to the amount of \$10,818,000 pursuant to the terms and provisions of its consolidated mortgage dated February 26, 1890.

ORDER No. 501.  
May 19, 1908.

Whereas the Public Service Commission for the First District has received the petition of the Manhattan Railway Company verified May 14, 1908, and the petition supplemental thereto bearing date May 16, 1908, praying for an order of the Commission authorizing the immediate issue of bonds to the amount of ten million eight hundred and eighteen thousand dollars (\$10,818,000) under and pursuant to the consolidated mortgage of said company dated February 26, 1890, and stating that in the opinion of the Commission the use of the capital to be secured by the issue of such bonds is required for the purposes of the corporation for the discharge or lawful refunding of its obligations.

*Resolved,* That the said petition of the said Manhattan Railway Company be heard by and before the Public Service Commission for the First District on Tuesday, the 26th day of May, 1908, at 2:30 o'clock in the afternoon, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers, namely: The Evening Mail, The World (morning), published in the borough of Manhattan, in the city of New York, on at least three separate days before the said hearing and file proof of said publication with the Secretary of this Commission on or before the opening of the said hearing.

Hearings were held May 26th, June 1st and 5th.

The Manhattan Railway Company owns all the elevated roads in Manhattan and the Bronx, but leases the same to the Interborough Rapid Transit Company. The purpose of the issue of the bonds, as stated in the petitions, was to take up \$10,818,000 of bonds outstanding, the issue of the \$894,000 of bonds being to cover a possible necessity of disposing of the \$10,818,000 issue for less than par.

The Chairman, to whom had been assigned the hearing on the application of the Manhattan Railway Company for the approval of certain bond issues, submitted to the Commission a report thereon, and after discussion a motion was made, duly seconded, and carried, approving the report and directing the counsel to the Commission to draft appropriate orders carrying out the recommendations of the report for submission at a future meeting of the Commission.

OPINION OF COMMISSION.

(Adopted June 12, 1908.)

CHAIRMAN WILLCOX:—

This matter comes on upon two applications under section 55 of the Public Service Commissions Law made by the Manhattan Railway Company for leave to issue bonds under its consolidated mortgage bearing date February 26, 1890:

1. The first application is for authority to issue such bonds to the amount of \$10,818,000, to take up by exchange or otherwise a like amount of the 6 per cent

bonds outstanding of the Metropolitan Elevated Railway Company due July 1, 1908, under the first mortgage of that company bearing date July 10, 1878.

2. The second application is for leave to issue for the discharge or lawful refunding of its obligations a further amount of such bonds, viz., \$894,000 to be certified by the trustee under a provision of the mortgage, which allows certification of bonds by the trustee for extensions only to an amount not exceeding \$600,000 a mile of double track.

The facts as to the Manhattan Railway Company, as such facts appear from the testimony and the franchise documents of the company on file in the office of the Commission, are as follows:

The Manhattan Railway Company was organized December 29, 1875, under the Rapid Transit Act, chapter 606 of that year, with a capital stock of \$2,000,000. Its routes were adopted September 2, 1875, by the Commission appointed under that act by the mayor and approved by the common council September 7, 1875, and by the General Term, August 15, 1876. The routes fixed by the Commissioners covered in part the routes of the New York Elevated Railroad Company and the Metropolitan Elevated Railway Company. These roads were later taken into the Manhattan Railway Company through leases and surrender of stock to it under the provisions of section 79 of the Railroad Law and of chapter 254 of the Laws of 1867, which antedated the Railroad Law. The New York Elevated Railroad Company was so merged February 3, 1890. The Metropolitan Elevated Railway Company was so merged May 7, 1894, and the Suburban Rapid Transit Company, whose routes were north of the Harlem river, was merged with the Manhattan Railway Company by certificate filed June 30, 1891.

With reference to these roads, it may be sufficient to say for the purpose of reference that the New York Elevated Railroad Company was organized in October, 1871, under the Railroad Act of 1850, and succeeded in December, 1871, by foreclosure of mortgage to the rights of the West Side & Yonkers Patent Railway Company, organized June 25, 1866, under Laws of 1866, chapter 697, Laws of 1867, chapter 489, Laws of 1868, chapter 855, and that the route of this company was substantially the route of the present Ninth Avenue and Third Avenue Elevated Railroads; that the Metropolitan Elevated Railway Company began as the Gilbert Elevated Railway Company, organized under Laws of 1872, chapter 885, 1873, chapter 837, and 1874, chapter 275; that its name was changed to Metropolitan Elevated Railway Company by order of the Supreme Court, Special Term, June 6, 1878, and that its route was that covered substantially by the Sixth Avenue and Second Avenue Elevated Road; that the Suburban Rapid Transit Company was incorporated in May, 1880, under the Rapid Transit Act of 1875, chapter 606, and took by lease and merger under the provisions of chapter 254, Laws of 1867, two railroads with authorized routes north of the Harlem river, both known as the New York, Fordham & Bronx Railway Company, one organized November 30, 1883, under chapter 140 of the Laws of 1850, and the other organized under the Rapid Transit Act of 1875, chapter 606, and that the Suburban Rapid Transit Company was leased to the Manhattan Railway Company April 1, 1891.

On May 20, 1879, the Manhattan Railway Company took leases of the New York Elevated Railroad Company and the Metropolitan Elevated Railway Company, in pursuance of which it assumed to the extent of \$8,500,000 of principal the bonds of each of the said companies, and agreed to pay the interest of said bonds and 10 per cent upon the stock issue of each of such companies to the amount of \$8,500,000. The relations of the three companies continued to be more or less complicated, but finally under an agreement bearing date August 1, 1884, the stock of the two elevated railroad companies was exchanged for stock of the Manhattan Railway Company, and the stock of the Manhattan Company became \$26,000,000, of which 120 shares of Manhattan stock represented each 100 shares of New York Elevated Railroad stock; 110 shares of Manhattan stock represented every 100 shares of Metropolitan stock, and the remaining \$11,050,000 of the capital stock of the Manhattan Company represented the \$13,000,000 of common stock of the Manhattan Company. This \$26,000,000 of issued stock was known as consolidated stock under the terms of that agreement.

At the time when the lease was made by the Suburban Rapid Transit Company to the Manhattan Railway Company, and the agreement for the surrender of the stock of the Suburban in exchange for stock of the Manhattan Company was made, the stock of the Manhattan Company was increased to \$30,000,000, the \$4,000,000 increase representing \$4,000,000 of stock of the Suburban Company which was to be taken over. This increase was allowed by the Board of Railroad Commissioners June 20, 1891. The stock of the Manhattan Company was again increased March 1, 1899, from \$30,000,000 to \$48,000,000 with the consent of the Board of Railroad Commissioners, and on January 17, 1903, with like consent of the Board of Railroad Commissioners, from \$48,000,000 to \$60,000,000, which is the amount of its present outstanding capital stock.

On February 26, 1890, the Manhattan Railway Company and the Metropolitan Elevated Railway Company executed a consolidated mortgage, which provided:

I. For the issue of \$40,000,000 of bonds to be disposed of as follows:	
(1) To be certified and delivered to the Manhattan Company forthwith . . . . .	\$13,352,000 00
(2) To take up by exchange or otherwise the outstanding first mortgage bonds of the New York Elevated Railroad Company . . . . .	8,925,000 00
(3) To take up by exchange or otherwise the outstanding debenture bonds of the New York Elevated Railroad Company . . . . .	1,000,000 00
(4) To take up by exchange or otherwise the outstanding first mortgage bonds of the Metropolitan Elevated Railway Company . . . . .	10,818,000 00
(5) To take up by exchange or otherwise the outstanding second mortgage bonds of the Metropolitan Elevated Railway Company . . . . .	4,000,000 00
(6) To take up by exchange or otherwise outstanding registered bond certificates of the Manhattan Railway Company . . . . .	1,905,000 00
Total . . . . .	<u><u>\$40,000,000 00</u></u>

II. That further and additional bonds beyond the \$40,000,000 of bonds above divided of the same general form, tenor and date, and bearing interest at not exceeding 5 per cent per annum, might be created and issued only for extensions of the existing system of railroads of said Manhattan Railway Company and Metropolitan Elevated Railroad Company, and only when and as the said railway companies or either of them shall construct or acquire any such extension; and it was provided that such further and additional bonds should be duly sealed and signed by the officers for the time being of the Manhattan Company and be certified by the trustee and issued and delivered by it at a rate not exceeding \$600,000 per mile of double track of elevated railway and \$300,000 per mile of single track of elevated railway of the extension so constructed and acquired, and not otherwise, and the fact of such construction or acquisition is to be evidenced for the purposes of the instrument by the written certificate of the president or vice-president and chief engineering officer of the Manhattan Company, and the ownership of the property constituting such extension shall be so vested as that the same shall form part of the mortgage security created by instrument and become subject to the lien thereof as a first charge thereon.

It appeared by the testimony upon the hearing that no bonds have ever been issued for any such extensions, but that at the present time there is outstanding of these 4 per cent consolidated mortgage bonds the sum of \$27,748,000 issued for purposes included in the list above mentioned, and there remains unissued of the said \$40,000,000 for the purposes mentioned the following items, namely:

Item 3, outstanding debenture bonds of the New York Elevated Railroad Company, \$1,000,000.

Item 4, outstanding first mortgage bonds of the Metropolitan Elevated Railway Company, \$10,818,000, besides a small amount of bonds held to take up bonds or debentures called but not presented.

With reference to the issue of bonds for extensions, the company has now filed a copy of a certificate of Vice-President and Chief Engineer upon this application showing the construction of 1.49 miles of double track of an extension of that portion of the road of the Manhattan Company formerly included in the lines of the Suburban Rapid Transit Company from One Hundred and Seventy-seventh street to Bronx Park, and it appears that the expense of constructing the said extension has been paid by the Manhattan Railway Company out of moneys in its treasury derived from the operation of the road and that the cost was \$1,408.-  
302.43.

From a legal standpoint, it would appear that there is no reason why the issue of \$10,818,000 of said bonds set aside and reserved to meet the like amount of 6 per cent bonds of the Metropolitan Elevated Railway Company should not be authorized as being reasonably requisite under the provisions of the statute for the discharge or lawful refunding of its obligations.

In respect to the second application for the allowance of an issue of \$894,000, by reason of the construction of the extension above mentioned, the company says that as between that company and the trustee of the consolidated mortgage, the trustee is authorized to certify and deliver to it that amount of the bonds of the company, and asks that inasmuch as the proceeds of an issue of \$10,818,000 of 4 per cent bonds under the consolidated mortgage will be insufficient to meet the amount necessary to pay \$10,818,000 on July 1, 1908, the Commission should authorize the issuance and sale by the company of the \$894,000 of bonds to raise the further amount required to pay off on July 1, 1908, the said Metropolitan bonds.

I am of the opinion that the bonds allowed by the mortgage to be certified by the trustee, to the amount of \$894,000, by reason of the construction or acquisition of the extension of 1.49 miles from Tremont to Bronx Park, have and can have no inception or validity as bonds of the Manhattan Railway Company until authorized to be issued by this Commission, under the provisions of section 55 of the Public Service Commissions Law, and that the Commission is without power to authorize an issue of such bonds unless it shall be of the opinion that the issue is reasonably requisite for one of the four following purposes, namely:

1. When necessary for the acquisition of property.
2. The construction, completion, extension or improvement of its facilities.
3. The improvement or maintenance of its service, or
4. Discharge or lawful refunding of its obligations.

I think, therefore, the Commission may, under said section, authorize the issue of the said \$894,000 bonds in case it shall be of the opinion that this issue is reasonably requisite for the discharge or lawful refunding by the said Manhattan Railway Company of the said \$10,818,000 of 6 per cent bonds of the Metropolitan Elevated Railway Company, and in this connection I refer to the recent opinion of the Public Service Commission for the Second District, In the Matter of the Lehigh and Hudson River Railway Company, decided May 7, 1908, in which, upon page 8, Stevens, Commissioner, in writing the opinion, refers to circumstances arising in the financing of corporations which are substantially similar to those existing in the present case.

As to the necessity and propriety of the issue in this case it appears that to take up and pay off the principal of \$10,818,000 Metropolitan 6 per cent bonds on July 1, 1908, at least that amount must be realized, and that from the \$10,818,000 of consolidated four per cent bonds under the mortgage of 1890, reserved for the purpose, there will not in any reasonable probability be realized in the present state of the money market a sufficient amount to meet the debt. The Manhattan Company's property is now held under lease by the Interborough Rapid Transit Company, by the terms of which the Manhattan Company receives from the lessee as rental \$10,000 a year and its stockholders receive from the lessee on account of rental 7 per cent on stock annually. The Manhattan Company is not, therefore, now an operating company or in the position to utilize its earnings from operation in making up any discount or deficit in the proceeds of the sale of said bonds, nor to incur a floating debt or secure the same, as may be done in the case of an

active company. It does not seem to me that ordinarily bonds should be sold at less than par, or that a deficiency owing to discount should be made up by a sale of long term bonds, which adds to capital account. I think that discount should be carried as an operating expense.

In view, however, of the peculiar circumstances of this case, I think that a further issue of the said \$804,000 of said bonds at 4 per cent is necessary and should be authorized for the discharge or refunding of the said Metropolitan bonds, but only so many should be sold as will realize an amount sufficient to meet the necessities of refunding the obligations, and the order authorizing the issue should contain a condition that bonds issued to refund the obligations should be offered for sale at public letting before being issued and sold, and that a strict account shall be kept of the proceeds derived from the sale of the bonds and of the disposition of the same, which shall be subject to the audit of the Commission.

Thereupon the following final order was issued:

**ORDER No. 572.**

June 12, 1908.

Whereas, the Manhattan Railway Company filed with the Public Service Commission for the First District its petition, verified May 14, 1908, and a supplemental petition dated May 16, 1908, praying for the authorization by said Commission of the issue of \$10,818,000 of bonds under and pursuant to a mortgage, bearing date the 28th day of February, 1890, and executed by said Manhattan Railway Company and the Metropolitan Elevated Railway Company to the Central Trust Company of New York, as Trustee, which said mortgage, known as a Consolidated Mortgage, covers, with other property the railroad structures and properties which were acquired by said Manhattan Railway Company from said Metropolitan Elevated Railway Company under a lease dated May 20, 1879, and a subsequent merger, pursuant to law, of said companies, consummated on May 7, 1894, the said \$10,818,000, of bonds to be dated February 28, 1890, payable April 1, 1900, and bearing interest at the rate of 4 per cent per annum; and

Whereas, the purpose for which said bonds are proposed to be issued is the discharge of refunding of obligations of said Metropolitan Elevated Railway Company consisting of \$10,818,000 of its First Mortgage Bonds dated July 10, 1878, and payable on July 1, 1908, the payment of which \$10,818,000 of bonds of the Metropolitan Elevated Railway Company was assumed by the Manhattan Railway Company; and

Whereas, the said Public Service Commission did thereupon, by order dated May 19, 1908, direct the said petition to be heard on Tuesday, May 28, 1908, at 2:30 o'clock in the afternoon, and that the petitioner publish a notice of the said application and of the time and place of the said hearing, in the manner and as provided in said order, and the petitioner did thereupon cause notice of said application and of the time and place of said hearing to be published in pursuance of such order, and did file proof thereof with the Secretary of the said Commission before the opening of said hearing; and the matter coming on to be heard on said May 28, 1908, upon said petition and said supplemental petition, and said petitioner having duly appeared by Julian T. Davies, Esq., and Charles A. Gardiner, Esq., its counsel, and no one appearing in opposition, and the petitioner having submitted proofs in support of said application, and the hearing having been duly adjourned from time to time, and the Commission having taken the testimony and having examined witnesses, books, records and accounts of the petitioner and being fully advised in the premises;

It being now the opinion of the Commission that the use of the capital to be secured by the issue of said bonds by the said Manhattan Railway Company is reasonably required for the discharge or lawful refunding of its obligations, it is hereby

*Ordered*, That the Public Service Commission for the First District does hereby authorize, subject to the conditions hereinafter set forth, the issue by the petitioner, Manhattan Railway Company, of \$10,818,000 face value of bonds, at 4 per cent interest, from April 1, 1908, payable semi-annually, under and pursuant to the said Consolidated Mortgage, bearing date the 28th day of February, 1890, executed by said Manhattan Railway Company and Metropolitan Elevated Railway Company to the Central Trust Company of New York as Trustee; the issue to be made upon the conditions and for the purposes following and not otherwise, to wit:

1. That the Manhattan Railway Company may sell the bonds hereby authorized, but only so many thereof shall be sold as shall be sufficient to realize an amount which will pay the principal of the bonds of the Metropolitan Elevated Railway Company, due July 1, 1908, and the reasonable expenses of refunding, which expenses shall not include, however, any commission for the sale of said bonds or for entering into any underwriting or purchase agreement; and the said proceeds of the sale of the bonds hereby authorized shall be applied by said Manhattan Railway Company only to or toward the payment on July 1, 1908, of the

principal of said Metropolitan bonds and the said reasonable expenses of such refunding.

2. Unless the said bonds shall be sold at private sale on a basis of not exceeding 4 4-10 per cent and accrued interest, the treasurer of the company shall invite proposals for the purchase of said bonds to be publicly advertised daily for not less than six days in at least four daily newspapers published in the city of New York to the end that the time and place of the sale shall be generally known; and the treasurer shall award the said bonds to the highest bidder or bidders therefor. Said proposals shall only be opened publicly by the treasurer of the company and in the presence of all the Public Service Commissioners for the First District, or such of them as shall attend at the time and place specified in said public advertisement. It shall be a condition of said sale (and the advertisement calling for proposals therefor shall so declare) that any bidder may bid as to said bonds for all or none at one price, or for all or any part at one price, or for portions of said bonds at different prices, and any bidder who shall bid for a portion of said bonds may be required to accept a part of the amount bid for by him at the same rate, or proportionately, as may be specified in his bid, and any bid which conflicts with this condition may be rejected; and if the board of directors deems it to be in the interest of the company so to do it may award the bonds to the bidder offering the highest price for all or a number of said bonds, provided, however, that if the board of directors deems it to be in the interest of the company it may reject all bids. The board of directors may prescribe such other conditions incident to and providing for the proposal for the purchase of bonds as to it may seem fit.

3. That the company shall keep true and correct accounts, showing the application by it of the proceeds of the sale of all bonds authorized to be issued hereby, and said accounts shall be audited from time to time by an impartial accountant or accountants, appointed for such purposes by this Commission. Said accounts shall specifically show the amounts received by the company from time to time upon the sale of the bonds issued hereunder. And it is further

*Ordered*, That this order shall take effect on the 12th day of June, 1908, and shall continue in force for a period of one year, or until otherwise ordered by the Commission.

That within five days after the service upon the said Manhattan Railway Company of this order, the said Manhattan Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### Manhattan Railway Company.—Application for authority to issue \$894,000 of bonds.

Hearing Order No. 502.  
Opinion of Chairman Wilcox.  
Final Order No. 573.

In the Matter  
of the

Application of the MANHATTAN RAILWAY COMPANY for leave to issue bonds to the amount of \$894,000 pursuant to the terms and provisions of its Consolidated Mortgage dated February 26, 1890.

ORDER No. 502.  
May 19, 1908.

Whereas, the Public Service Commission for the First District has received the petition of the Manhattan Railway Company, verified the 14th day of May, 1908, praying an order of the Commission authorizing the immediate issue of bonds to the amount of eight hundred and ninety-four thousand dollars (\$894,000) under and pursuant to the consolidated mortgage of said company dated February 26, 1890, and stating that in the opinion of the Commission the use of the capital to be secured by the issue of such bonds is required for the purposes of the corporation and for the discharge or lawful refunding of its obligations,

*Resolved*, That the said petition of the said Manhattan Railway Company be heard by and before the Public Service Commission for the First District on Tuesday, the 26th day of May, 1908, at 2:30 o'clock in the afternoon, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers, namely: the Evening Mail, the World (Morning), published in the borough of Manhattan, city of New York, on at least three separate days before said hearing and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

Hearings were held May 26th, June 1st and 5th.

active company. It does not seem to me that ordinarily bonds should be sold at less than par, or that a deficiency owing to discount should be made up by a sale of long term bonds, which adds to capital account. I think that discount should be carried as an operating expense.

In view, however, of the peculiar circumstances of this case, I think that a further issue of the said \$894,000 of said bonds at 4 per cent is necessary and should be authorized for the discharge or refunding of the said Metropolitan bonds, but only so many should be sold as will realize an amount sufficient to meet the necessities of refunding the obligations, and the order authorizing the issue should contain a condition that bonds issued to refund the obligations should be offered for sale at public letting before being issued and sold, and that a strict account shall be kept of the proceeds derived from the sale of the bonds and of the disposition of the same, which shall be subject to the audit of the Commission.

Thereupon the following final order was issued:

ORDER No. 572.

June 12, 1908.

Whereas, the Manhattan Railway Company filed with the Public Service Commission for the First District its petition, verified May 14, 1908, and a supplemental petition dated May 16, 1908, praying for the authorization by said Commission of the issue of \$10,818,000 of bonds under and pursuant to a mortgage, bearing date the 26th day of February, 1890, and executed by said Manhattan Railway Company and the Metropolitan Elevated Railway Company to the Central Trust Company of New York, as Trustee, which said mortgage, known as a Consolidated Mortgage, covers, with other property the railroad structures and properties which were acquired by said Manhattan Railway Company from said Metropolitan Elevated Railway Company under a lease dated May 20, 1879, and a subsequent merger, pursuant to law, of said companies, consummated on May 7, 1894, the said \$10,818,000, of bonds to be dated February 26, 1890, payable April 1, 1900, and bearing interest at the rate of 4 per cent per annum; and

Whereas, the purpose for which said bonds are proposed to be issued is the discharge of refunding of obligations of said Metropolitan Elevated Railway Company consisting of \$10,818,000 of its First Mortgage Bonds dated July 10, 1878, and payable on July 1, 1908, the payment of which \$10,818,000 of bonds of the Metropolitan Elevated Railway Company was assumed by the Manhattan Railway Company; and

Whereas, the said Public Service Commission did thereupon, by order dated May 19, 1908, direct the said petition to be heard on Tuesday, May 26, 1908, at 2:30 o'clock in the afternoon, and that the petitioner publish notice of the said application and of the time and place of the said hearing, in the manner and as provided in said order, and the petitioner did thereupon cause notice of said application and of the time and place of said hearing to be published in pursuance of such order, and did file proof thereof with the Secretary of the said Commission before the opening of said hearing; and the matter coming on to be heard on said May 26, 1908, upon said petition and said supplemental petition, and said petitioner having duly appeared by Julian T. Davies, Esq., and Charles A. Gardiner, Esq., its counsel, and no one appearing in opposition, and the petitioner having submitted proofs in support of said application, and the hearing having been duly adjourned from time to time, and the Commission having taken the testimony and having examined witnesses, books, records and accounts of the petitioner and having fully advised in the premises;

It being now the opinion of the Commission that the use of the capital to be secured by the issue of said bonds by the said Manhattan Railway Company is reasonably required for the discharge or lawful refunding of its obligations, it is hereby

*Ordered*, That the Public Service Commission for the First District does hereby authorize, subject to the conditions hereinafter set forth, the issue by the petitioner, Manhattan Railway Company, of \$10,818,000 face value of bonds, at 4 per cent interest, from April 1, 1908, payable semi-annually, under and pursuant to the said Consolidated Mortgage, bearing date the 26th day of February, 1890, executed by said Manhattan Railway Company and Metropolitan Elevated Railway Company to the Central Trust Company of New York as Trustee; the issue to be made upon the conditions and for the purposes following and not otherwise, to wit:

- That the Manhattan Railway Company may sell the bonds hereby authorized, but only so many thereof shall be sold as shall be sufficient to realize an amount which will pay the principal of the bonds of the Metropolitan Elevated Railway Company, due July 1, 1908, and the reasonable expenses of refunding, which expenses shall not include, however, any commission for the sale of said bonds or for entering into any underwriting or purchase agreement; and the said proceeds of the sale of the bonds hereby authorized shall be applied by said Manhattan Railway Company only to or toward the payment on July 1, 1908, of the

principal of said Metropolitan bonds and the said reasonable expenses of such refunding.

2. Unless the said bonds shall be sold at private sale on a basis of not exceeding 4 4-10 per cent and accrued interest, the treasurer of the company shall invite proposals for the purchase of said bonds to be publicly advertised daily for not less than six days in at least four daily newspapers published in the city of New York to the end that the time and place of the sale shall be generally known; and the treasurer shall award the said bonds to the highest bidder or bidders therefor. Said proposals shall only be opened publicly by the treasurer of the company and in the presence of all the Public Service Commissioners for the First District, or such of them as shall attend at the time and place specified in said public advertisement. It shall be a condition of said sale (and the advertisement calling for proposals therefor shall so declare) that any bidder may bid as to said bonds for all or none at one price, or for all or any part at one price, or for portions of said bonds at different prices, and any bidder who shall bid for a portion of said bonds may be required to accept a part of the amount bid for by him at the same rate, or proportionately, as may be specified in his bid, and any bid which conflicts with this condition may be rejected; and if the board of directors deems it to be in the interest of the company so to do it may award the bonds to the bidder offering the highest price for all or a number of said bonds, provided, however, that if the board of directors deems it to be in the interest of the company it may reject all bids. The board of directors may prescribe such other conditions incident to and providing for the proposal for the purchase of bonds as to it may seem fit.

3. That the company shall keep true and correct accounts, showing the application by it of the proceeds of the sale of all bonds authorized to be issued hereby, and said accounts shall be audited from time to time by an impartial accountant or accountants, appointed for such purposes by this Commission. Said accounts shall specifically show the amounts received by the company from time to time upon the sale of the bonds issued hereunder. And it is further

*Ordered*, That this order shall take effect on the 12th day of June, 1908, and shall continue in force for a period of one year, or until otherwise ordered by the Commission.

That within five days after the service upon the said Manhattan Railway Company of this order, the said Manhattan Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

**Manhattan Railway Company.— Application for authority to issue \$894,000 of bonds.**

Hearing Order No. 502.  
Opinion of Chairman Willecox.  
Final Order No. 573.

In the Matter  
of the

Application of the MANHATTAN RAILWAY COMPANY for leave to issue bonds to the amount of \$894,000 pursuant to the terms and provisions of its Consolidated Mortgage dated February 26, 1890.

ORDER No. 502.  
May 19, 1908.

Whereas, the Public Service Commission for the First District has received the petition of the Manhattan Railway Company, verified the 14th day of May, 1908, praying an order of the Commission authorizing the immediate issue of bonds to the amount of eight hundred and ninety-four thousand dollars (\$894,000) under and pursuant to the consolidated mortgage of said company dated February 26, 1890, and stating that in the opinion of the Commission the use of the capital to be secured by the issue of such bonds is required for the purposes of the corporation and for the discharge or lawful refunding of its obligations,

*Resolved*, That the said petition of the said Manhattan Railway Company be heard by and before the Public Service Commission for the First District on Tuesday, the 26th day of May, 1908, at 2:30 o'clock in the afternoon, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers, namely: the Evening Mail, the World (Morning), published in the borough of Manhattan, city of New York, on at least three separate days before said hearing and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

Hearings were held May 26th, June 1st and 5th.

## OPINION OF COUNSEL.

EAST RIVER TERMINAL RAILROAD.

Public Service Commission for the First District:

May 21, 1908.

SIRS:—I am in receipt of your secretary's letter of May 7th transmitting papers in connection with two applications of the East River Terminal Railroad, one a petition verified April 30, 1908, for a certificate of necessity, and the other a petition verified April 30, 1908, asking leave to issue stock to the amount of \$10,000, under section 55 of the Public Service Commissions Law.

I think that action upon the last named petition may properly await the consideration of the first petition.

The first petition for a certificate of necessity is drawn under section 53 of the Public Service Commissions Law. I am inclined to the belief that the granting of a certificate under section 53 of the Public Service Commissions Law should await the obtaining of a franchise from the local authorities for the construction and operation of the street surface railroad proposed to be built by this company.

I think, however, a certificate under section 59 and 59-a of the Railroad Law, that public convenience and a necessity require the construction of the road, may be granted by the Commission as successors of the Board of Railroad Commissioners, prior to the obtaining of the consents from the local authorities and property owners required by section 91 of the Railroad Law.

Inasmuch, however, as this petition is drawn under section 53 of the Public Service Act, my suggestion would be that the Secretary advise the applicant to withdraw this petition and substitute in place of the same one drawn under section 59 and 59-a of the Railroad Law.

I return you herewith the papers transmitted to me by the Secretary under date of May 7th.

Respectfully yours,

GEO. S. COLEMAN,

Counsel to the Commission.

Thereupon, the Secretary was directed to advise the applicant in accordance with the recommendation of counsel to withdraw the petition drawn under Section 53 of the Public Service Commissions Law, and to substitute in place thereof one drawn under Sections 59 and 59-a of the Railroad Law.

The East River Terminal Railroad Company accordingly withdrew its petition and presented a new petition as suggested in the opinion of counsel upon which the following hearing order was issued:

In the Matter  
of the  
Application of the EAST RIVER TERMINAL  
RAILROAD for a certificate of convenience and  
necessity under section 59 of the Railroad Law.

HEARING ORDER No. 634.  
July 14, 1908.

Whereas, the Public Service Commission for the First District has received the petition of the East River Terminal Railroad, verified June 15, 1908, alleging that the Board of Directors of the said company have caused a copy of the articles of association of said company to be published in one newspaper, published in the county of Kings, the county in which the said railroad is proposed to be located, once a week for three successive weeks, and praying a certificate that public convenience and a necessity require the construction of said railroad, as proposed in the articles of incorporation of the said company, and it appearing that the said railroad is proposed to be located in the borough of Brooklyn, city of New York, as follows, to wit:

On and along North Fourth street and across Kent avenue and Wythe avenue; the road along North Fourth street to be a single track road entering upon said highway at the southeast corner of Kent avenue and North Fourth street, and running thence easterly along said North Fourth street about 300 feet to a point about midway between Kent avenue and Wythe avenue, and across the sidewalk of said North Fourth street, the western termini of said track being on the easterly side of the East river at point between North Third and North Fourth streets in said borough, and the eastern termini to be at the hereinbefore mentioned point on North Fourth street, midway between Kent avenue and Wythe avenue; also, a railroad of six tracks across Kent avenue, between North Third and North Fourth streets from the westerly side or house line thereof to the easterly side or house line thereof; and also a railway on Wythe avenue of three tracks between North Third and North Fourth streets from the westerly side or house line of said Wythe avenue to the easterly side or house line thereof, said construction to consist of tracks of regulation or conventional width.

Resolved, That the said petition of the said East River Terminal Railroad be heard by and before the Public Service Commission for the First District on the 7th day of August, 1908, at 10 o'clock in the forenoon, and that the said company publish a notice of the said application and of the time and place of the said hearing, setting out the names and descriptions of the streets, roads, avenues

and highways in and upon which it is proposed to construct and operate such railroad in the following newspapers published in the borough of Brooklyn, city of New York, Brooklyn Times, on at least three days prior to the said hearing, and file proof of such publication with the secretary of this Commission on or before the opening of said hearing.

Hearings were held August 7th, 18th and 28th.

REPORT BY COMMISSIONER BASSETT.

(Adopted October 13, 1908.)

COMMISSIONER BASSETT:—

Before discussing the merits of this application it seems proper to describe the steps that a railroad corporation about to construct a railroad in the city of New York must take and what the relation of the Commission is to such steps.

First it must file its certificate of incorporation with the Secretary of State, in accordance with the requirements of the Railroad Law. Not every corporation that owns tracks and rolling stock is a railroad corporation, but such corporations can not take advantage of the privileges that railroad corporations possess in the use of public places and the exercise of the power of eminent domain. When the certificate is filed the railroad corporation can not exercise its powers until it has complied with additional provisions of the law.

The second step that it must take is to obtain a certificate of public convenience and a necessity, in accordance with paragraph 59 of the Railroad Law. This certificate must be obtained from the Public Service Commission as successor of the Board of Railroad Commissioners. The reason why the corporation must take this step is because the state is unwilling that corporations have the privilege of using or crossing public places and the power of condemnation of land unless there is a public necessity for them. It is not the policy of the state that one railroad shall unnecessarily parallel another or that a so-called railroad corporation which may operate a mile or two of railroad on its own land shall have the right of eminent domain. Railroad corporations whether about to construct in the city of New York or out of it must obtain this certificate. The Railroad Law provides that a review be had by the Appellate Division of the Supreme Court of the determination of the Board of Railroad Commissioners refusing a certificate. The certificate of incorporation must be referred to for the statement of the route proposed, and it has been repeatedly held that the Board of Railroad Commissioners could not attach conditions to the certificate, but were confined to the approval or disapproval in whole or in part of the route specified in the articles of incorporation.

The third step that the railroad corporation must take if it proposes to use any street or public place in the city of New York is to obtain a consent, permit or franchise from the Board of Estimate and Apportionment and the Mayor. The Legislature cannot make effective the right to use streets because of the constitutional provision that no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the local authorities having control of that portion of the street or highway upon which it is proposed to construct or operate such railroad be first obtained. Furthermore, the state of New York has in the charter of the city of New York given the Board of Estimate and Apportionment the power to grant a franchise or right to any railroad corporation to use any of its streets or public places, the only exception being certain provisions of the Rapid Transit Act. It is obvious that if the railroad corporation did not desire any franchise from the city of New York it could still construct and operate its road without it. It could build on its own land and if it had obtained a certificate of public convenience and a necessity it would have the power of condemnation, but it could not cross a street or proceed upon any public place. In other words, the state of New York gives the corporation the right to be a corporation and the power of eminent domain and all that the city franchise or consent adds to the corporation is the power to use public streets or places.

The next step the railroad corporation must take if it plans to construct all or part of its line in the streets of the city of New York is to obtain the consent

in writing of the owners of one-half in value of abutting property. If the required proportion of the abutting property owners do not consent the corporation may ask the Appellate Division of the Supreme Court for its consent.

The next step that a steam railroad corporation must take in case it desires to cross any public street is to obtain a determination from the Public Service Commission as successor to the Board of Railroad Commissioners whether such crossing shall be above, below or at the grade of such street. The prevention of grade crossings has been considered by the Legislature to be of such importance that it has not been willing to allow municipalities to have control of this subject. When the Public Service Commission considers the granting of a certificate of public convenience and a necessity it need not at that time consider whether a certain street will be crossed at grade or over or below its grade. That is a question reserved for a later period. Neither would it be proper for the Commission after considering an application to fix the grade to determine that it could not cross the street at all, because this question would have already been determined by the issue of the certificate of public convenience and a necessity and by the granting of a consent or franchise by the municipality.

Before the company can issue stock, mortgage property or issue bonds it must obtain the consent of the Public Service Commission in accordance with the provisions of the Public Service Commissions Act. The purpose of requiring this step is to prevent over-capitalization or wrongful use of the property of the corporation. Before granting the consent the Public Service Commission may properly ascertain what property the corporation has or purposes to obtain, because the state is interested to see that the corporation is an entity prepared to furnish a public service sufficiently independent and complete to enable it to comply with the provisions of the law.

It is not necessary for the purposes of this decision to discuss the further provisions of section 53 of the Public Service Commissions Law, which require the permission and approval of the Public Service Commission before construction or exercise of the franchise can begin. This requirement is in many respects similar to that for a certificate of public convenience and a necessity under the Railroad Law. A railroad corporation must procure this permission and approval not only for its main lines but for its extensions.

A street surface railroad need not apply for a determination as to whether it will go under or over the grade of streets that it may cross, but in other respects it must take the steps above enumerated. The law also imposes certain burdens upon such a road in the city of New York. One of these is the requirement that a percentage of its gross receipts must be paid to the municipality and another is that no open steam locomotives may be used by it.

We may now better consider the situation presented in this application. The East River Terminal Railroad filed its certificate of incorporation in the office of the Secretary of State on November 10th, 1907. This certificate states that the kind of railroad to be built and operated shall be a railroad of standard gauge to be operated by steam power, a dummy or locomotive engine of the switching variety being used, which said railroad is to be operated as a freight railroad exclusively, receiving and distributing all classes of freight. Its location is stated to be from a point on the easterly bank of the East river between North Third street and North Fourth street, running thence easterly about one-half mile to a point east of Wythe avenue between North Third street and North Fourth street. This description would carry the railroad a little more than the length of two city blocks and it would need to cross two streets of the borough of Brooklyn: i. e., Kent avenue and Wythe avenue. I have no doubt that the certificate of incorporation shows that the kind of road to be built or operated is a steam railroad of standard gauge. If it were a street surface railroad the Railroad Law requires it to state in its certificate of incorporation the names and description of the streets, avenues and highways, in which the road is to be constructed. When, however, we turn to the certificate of incorporation we find no statement of the streets in which it is to be constructed. It is obvious, however, that to operate between the termini set forth in the certificate of

incorporation it must cross two city streets. But every steam railroad entering into the city must ordinarily cross city streets. Moreover, it would appear from the Railroad Law (Section 90) that a street surface railroad is such a one as operates mainly on the surface of streets. If it is a street surface railroad it need not apply to the Commission for a determination as to grade crossings.

It is necessary, therefore, to determine whether this corporation is a steam railroad or a street surface railroad, because the characteristics of the two are different for the purposes of this application. This distinction is the more important because the proceedings of the applicant appear to have confused the two classes. For instance, the applicant in accordance with paragraph 90 of the Railroad Law, which applies only to street surface railroads, has filed in the same offices where the original certificates were filed a statement covering the streets which it proposes to cross and also a street which it proposes to run along. In this statement it denominates itself a street surface railroad. The application for a certificate of public convenience and a necessity which the company now seeks from the Commission also states that it was duly incorporated as a street surface railroad. If it is a street surface railroad it must pay a portion of its gross income to the municipality, and it need not apply for a determination whether it must go over or under the streets that it proposes to cross. Even if the applicant had incorporated as a street surface railroad the Commission would not be willing to grant it a certificate of convenience as a street surface railroad for carrying freight exclusively at this place, and one of the main reasons for the refusal would be that the company would thus escape the necessity of applying to the Commission to determine whether the streets should be crossed above or below grade. If the company is unwilling to amend its application so that it plainly asks for a certificate as a steam railroad company the certificate must be refused on this account. The company's certificate of incorporation as well as the proof presented on the hearing shows that it is strictly a steam railroad for carrying freight and that it possesses none of the characteristics of a street surface railroad.

A further irregularity should be noted here. The certificate of incorporation states that the railroad is to be built between North Third street and North Fourth street. The application states that a single track road is to be constructed along North Fourth street to a point about midway between Kent avenue and Wythe avenue and across the sidewalk of said North Fourth street. The map filed with the petition also shows a single track across North Fourth street to the property of the Brooklyn Cooperage Company. This is not contemplated in the certificate of incorporation and is not properly part of the steam railroad the route of which is to be considered at this time. The petition also refers to three tracks crossing Wythe avenue, whereas the map shows four tracks. It is desirable that the petition and map should correspond.

If the company either makes a new application for a certificate of public convenience and a necessity as a steam railroad or amends its application to that effect, I see no objection to granting it a certificate of public convenience and a necessity, but on the contrary there are many weighty reasons why this should be done. The proof shows that an enormous amount of freight is now shipped from the freight yard now operated between Kent avenue and the East river. This includes not only the great tonnage of the neighboring sugar refinery but merchandise to and from nearly all of the railroads entering the port of New York and to and from the large manufacturers and shippers of this part of Brooklyn. The increase in the population of Brooklyn has caused the tonnage passing through this yard to increase greatly in recent years, yet the space is so restricted that the handling of freight cars and freight at this point has become more and more difficult and the welfare of the public appears to demand that a greater space should be made available for this purpose than can be obtained between the East river and Kent avenue, which is the street next east of the river. It would appear that this can only be accomplished by allowing the carriage and switching of freight cars further back from the edge of the East river, and it seems reasonable and right that the freight railroad to be constructed for the accomplishment of this should extend across Kent avenue, through the adjoining block, across Wythe avenue and into the block east of Wythe avenue. The freight cars are

brought to this location on floats. It would be unreasonable to compel the persons handling this freight to obtain a large water frontage on which to build a succession of docks. Large manufacturing structures stand in the way of widening out the freight terminal yard. These considerations seem to me to make it proper that greater space should be secured by extending the road two blocks easterly.

The above outline of steps to be taken by a new railroad company in the city of New York shows that it is not necessary to consider in detail at this time the questions relating to the present ownership of the tracks now used for freight switching. It may be presumed that the company will find a way to obtain the necessary land and property. These and other considerations will be brought before the Commission on the application for the issue of stock. If owners of freight yards and track in the neighborhood objected to the grant of the certificate now applied for they would have protested before the Commission at the hearings but no one put in appearance to oppose. If the applicant company proceeds with the matter in hand in the manner above outlined it will later apply for the determination of the Commission regarding passing under or over the two city streets. At that time the Commission will consider the relation of the proposed terminal railroad to the city streets with a view to the importance of keeping these streets as free from obstacles as possible and with a view to carrying out the direction of paragraph 60 of the Railroad Law, to the effect that all steam railroads must be so constructed as to avoid all public crossings at grade whenever practicable so to do.

I do not at this time propose that an order should be made denying the application. The Railroad Law provides that when an application is denied a new application cannot be made until one year has elapsed. This application, if presented by a party conceding itself to be a steam railroad company, appears to me to be plainly meritorious. The Commission should give the company an opportunity to withdraw the present application and make a new one in proper form, or if it seems best, to amend the present application and map. If the applicant does not care to make a new application or amend the present one the Commission will, after a reasonable time has elapsed, probably wish to enter an order denying the application.

The company subsequently presented a new petition, as suggested, and a certificate of convenience and a necessity was granted to it, Commissioner Bassett writing the following supplemental opinion:

**OPINION OF COMMISSION.**

(Adopted December 4, 1908.)

**COMMISSIONER BASSETT:—**

The East River Terminal Railroad is a railroad corporation organized under chapter 585 of the Laws of 1890, commonly called the Railroad Law, and the acts amendatory thereof and supplementary thereto. Its certificate of incorporation states that the proposed railroad is to be operated as a freight railroad exclusively, and that it is to be built and operated from a point on the easterly bank of the East River between North Third street and North Fourth street, running thence easterly about one-half mile to a point east of Wythe avenue between North Third street and North Fourth street, all in the borough of Brooklyn, city of New York.

The corporation petitioned the Commission for a certificate of public convenience and a necessity. Hearings have been held and the formal proof required in such cases has been made. On October 13, 1908, I made a report to the Commission (see minutes, page 1614) pointing out that the petition should be amended to show that the petitioning corporation is a steam railroad corporation and not a street surface railroad corporation, and also to show the termini and proposed route of the railroad as stated in its certificate of incorporation instead of merely stating the portions of city streets that the proposed railroad will cross. This report is referred to, to supplement this opinion. Since the filing of such report the petitioner has filed an amended petition which is considered sufficient. I do not think that the advertising and taking of formal proof need be repeated because the former advertisements referred to the route as shown in the certificate

of incorporation and all parties interested had full notice of the essential features of the request made by the corporation to the Commission. Power to permit amendments in such cases is specifically granted to the Commission by law. My previous report set out the facts showing that there is a public need of this railroad. In my opinion the conditions required by law have been complied with by the petitioner and it is also my opinion that public convenience and a necessity require the construction of the railroad proposed in the certificate of incorporation of the petitioner.

Thereupon, on motion made and duly seconded, the following certificate of convenience and a necessity was granted:

**CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.**

December 4, 1908.

The East River Terminal Railroad, having duly made application to the Public Service Commission for the First District by its petition, verified June 15, 1908, for a certificate that it has complied with the conditions provided for in section 59 of the Railroad Law and that public convenience and a necessity require the construction of the railroad proposed in its Articles of Association, and its said application having been duly heard at a public hearing held by and before the Public Service Commission for the First District on the 7th day of August, 1908, and subsequent days, in pursuance of due notice thereof, Mr. Henry F. Cochrane, of counsel for said East River Terminal Railroad appearing in support of said application and no one appearing in opposition thereto, and it having appeared that said petition was defective in that it appeared therefrom that said East River Terminal Railroad was a street surface railroad and not, as in fact, a steam railroad, and said petition having therefore been withdrawn and an amended petition, verified November 10, 1908, together with a map showing the streets, avenues and highways proposed to be crossed by the new construction, having been duly presented by said East River Terminal Railroad to and filed with said Public Service Commission, and said East River Terminal Railroad having duly furnished a receipt for the payment of its organization tax from the State Treasurer and having filed with said Public Service Commission satisfactory proof of the publication of a copy of its Articles of Association in The Brooklyn Eagle, a newspaper published in the county of Kings, in which said road is proposed to be located, once a week for three successive weeks, and said certificate having been applied for within six months after the completion of said three weeks' publication, now, it appearing that the conditions of section 59 of the Railroad Law have been duly complied with by said East River Terminal Railroad and that public convenience and a necessity require the construction of the railroad proposed in its Articles of Association, it is

Ordered, That said application be and the same hereby is granted; and The Public Service Commission for the First District hereby certifies that the conditions provided for in section 59 of the Railroad Law have been complied with by said East River Terminal Railroad and that public convenience and a necessity require the construction of the steam railroad for the conveyance of freight proposed in the Articles of Association of the East River Terminal Railroad, to wit:

"A railroad to be built, maintained and operated from the point on the easterly bank of the East River between North Third street and North Fourth street as its western termini, running thence easterly about one-half mile to a point east of Wythe avenue between North Third and North Fourth street, which said last point will be the eastern termini of said road."

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**New York, Westchester and Boston Railway Company.— Application for a certificate of convenience and a necessity.**

In the Matter

of the

Application of NEW YORK, WESTCHESTER  
AND BOSTON RAILWAY COMPANY for a Cer-  
tificate of Convenience and a Necessity, under  
section 59 of the Railroad Law, and under sec-  
tion 53 of the Public Service Commissions Law.

ORDER NO. 811.  
October 30, 1908.

Whereas, the Public Service Commission for the First District has received the petition, verified October 27, 1908, of the New York, Westchester and Boston Rail- way Company, praying the Commission to grant to it a certificate of public con-

venience and a necessity, as provided by section 59 of the Railroad Law, and its permission and approval, as provided under section 53 of the Public Service Commission Law.

*Resolved*, That the said petition of the said New York, Westchester and Boston Railway Company be heard by and before the Public Service Commission for the First District on the 9th day of November, 1908, at 4 o'clock in the afternoon, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers published in the city of New York: New York Herald, the Evening Mail, on at least three separate days prior to the said hearing and file proof of such publication with the Secretary of this Commission on or before the opening of said hearing.

Hearings held November 9th and 16th. Briefs were submitted November 27th. The matter is undetermined.

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## ORDERS FOLLOWING APPLICATIONS FOR APPROVAL OF CHANGES OF MOTIVE POWER.

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**City Island Railroad Company.**—Application for approval of change of motive power.

Hearing Order No. 807.  
Opinion of Counsel.  
Final Order No. 843.

In the Matter  
of the  
Application of the CITY ISLAND RAILROAD COMPANY for the Approval of the Public Service Commission for the First District, of the Change of Motive Power on the Railroad of the City Island Railroad Company in borough of the Bronx, City of New York.

Under section 100 of the Railroad Law.

HEARING ORDER No. 807.  
October 27, 1908.

An application dated October 15, 1908, having been made by the City Island Railroad Company under section 100 of the Railroad Law to the Public Service Commission for the First District for the approval of the Public Service Commission for the First District of a change of motive power from horse power to overhead electric current to be operated in connection with the American Monorail System, perfected by Howard Hansel Tunis,

*Ordered*, That a hearing be had in the hearing room of the office of the Public Service Commission for the First District, at No. 154 Nassau street, city of New York, at 4 P. M., November 6, 1908, at which hearing said application will be considered.

*Further ordered*, That five days' notice of this hearing be given by mail to the City Island Railroad Company.

*Further ordered*, That five days' notice of this hearing be given by mail to the city of New York through the office of the Corporation Counsel.

*Further ordered*, That the annexed notice be published by said City Island Railroad Company on Saturday, October 31, and on Monday, November 2, in the New York Press and in the New York Evening Post.

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### PUBLIC SERVICE COMMISSION, FIRST DISTRICT.

CITY ISLAND RAILROAD COMPANY,

CHANGE TO ELECTRIC POWER.

Application has been made to the Public Service Commission for the First District by the City Island Railroad Company for the approval of a change of motive power from horse power to overhead electric current to be operated in connection with the American Monorail System perfected by Howard Hansel Tunis. A hearing upon said application will be held in the hearing room of the office of the

Public Service Commission for the First District, at No. 154 Nassau street, city of New York, at 4 P. M., November 6, 1908, at which hearing said application will be considered.

Dated, New York, October 27, 1908.

CITY ISLAND RAILROAD COMPANY.

By.....

The Counsel to the Commission rendered the following opinion in the matter:

\*[Change of motive power — Approval by Commission — Power of Commission to authorize erection of a new structure necessary to the monorail system — Approval by Commission of change of motive power is necessary and proper — Necessity of application to board of estimate and apportionment — Consents of abutting owners.]

OPINION OF COUNSEL.

November 17, 1908.

*Public Service Commission for the First District:*

Sirs:— Answering Commissioner Eustis's oral request for an opinion on the question of whether the Commission has authority to approve a change in motive power from horse power to overhead electric current by the American Monorail System, as perfected by H. H. Tunis, I beg to advise you as follows:

Such approval of change of motive power is governed by section 100 of the Railroad Law, which reads as follows:

"§ 100. Motive Power.—Any street surface railroad may operate any portion of its road by animal or horse power, or by cable, electricity, or any power other than locomotive steam power, which said locomotive steam power is primarily generated by the locomotive propelling the cars, and in the use of which either escaping smoke or steam or smoke is visible, which may be approved by the state board of railroad commissioners, and consented to by the owners of one-half of the property bounded on that portion of the railroad with respect to which a change of motive power is proposed; and if the consent of such property owners cannot be obtained, the determination of three disinterested commissioners, appointed by the appellate division of the supreme court of the department in which such railroad is located, in favor of such motive power, confirmed by the court, shall be taken in lieu of the consent of the property owners. The consent of the property owners shall be obtained and the proceedings for the appointment and the determination of the commissioners and the confirmation of their report shall be conducted in the manner prescribed in sections ninety-one and ninety-four of this article, so far as the same can properly be made applicable thereto. "Any railroad corporation making a change in its motive power under this section, may make any changes in the construction of its road or roadbed or other property rendered necessary by the change in its motive power. \* \* \*

It has been held that this section authorizes such changes as from horse power to overhead trolley power and from horse power to underground cable power.

In my opinion the testimony taken at the hearing indicates that the change contemplated in the case of the Pelham Park Railroad Company and City Island Railroad Company is not so essentially different from that of a change to trolley construction as to prevent your granting the power to erect the new structure as part of the equipment necessary to the new motive power, under the provisions of section 100 of the Railroad Law. The question is one of degree, and as the nature of the structure is not well known it is of course uncertain how great the additional burden on the street will be. If it prove to be similar to trolley construction, I should expect the courts to hold that your approval is sufficient. If, on the other hand, a structure is erected that is more like an elevated railroad, then I should expect the courts to hold that the franchise for this should be obtained from the board of estimate and apportionment.

In any event, your approval of the change of motive power is necessary and proper, and if additional authority is needed from the board of estimate and apportionment the railroad companies may apply to that board.

I can see no reason why your Commission should not grant the approval asked, if in your opinion the change is desirable. The railroad companies in assuming that no application to the board of estimate and apportionment is necessary are taking a risk with full knowledge of the facts, and your action can in no way prevent the city of New York from exercising its rights in the matter.

The railroad companies have stated that they have the necessary consents of property owners, and I think your Commission may reasonably require that such consents be submitted for examination before your approval is given.

I send you herewith a proposed resolution approving this change.

Respectfully yours,

(Signed)

GEORGE S. COLEMAN,

*Counsel to the Commission.*

Hearings were held November 6th and 12th.

\* See footnote, page 9.

The following discussion was had in the Commission upon the granting of the application:

Commissioner Bassett: "In considering this proposition, we act under the powers that were granted to us as successors of the State Railroad Board, and somewhat as when issuing a certificate of public convenience and a necessity. Before a company can change its motive power it must obtain our approval, but that does not mean that all needed rights are perfected any more than when we issue a certificate of public convenience and a necessity, it means that no further rights may be needed. I can easily conceive that a company operating a horse railroad should go through two or three separate cities. It might then apply to the Public Service Commission to make a change of the motive power to electricity. The grant of the certificate would still leave the company where it might need to go to these several cities to procure additional rights. It therefore seems to me that it is not necessary that we should await the action of the board of estimate and apportionment before we grant this certificate of change of motive power. It leaves the company free to obtain such additional rights as the law demands, and the municipality is in no way injured. I am therefore in favor of the resolutions and second the motion for their adoption."

Commissioner Maitble: "I wish to be excused from voting on this motion, not having seen the Engineer's report and not knowing, except by verbal communication, what statements are made therein. Personally, I consider it quite improper to authorize offhand a change in motive power which involves such a radical change as the adoption of a method which has not been tried in New York nor in any other city in the United States under the conditions which will exist on the two lines running between Bartow and City Island. Until an engineering report has been submitted which states that the plan is safe and proper in the judgment of a competent electrical engineer, I cannot see how one can vote intelligently upon these resolutions."

The following final order was issued:

ORDER No. 843.

November 17, 1908.

Whereas an application, dated October 15, 1908, has been made to the Public Service Commission for the First District by the City Island Railroad Company for approval of change of motive power from horse power to overhead electric power as used by the American Monorail System, and

Whereas a hearing was held before the Public Service Commission for the First District after due notice given to the city of New York and to the public by advertisement duly had in certain newspapers, to wit: the New York Press and the New York Evening Post, at which hearing testimony was taken, and at which hearing it appeared that the change of motive power as above set forth had been consented to by the owners of more than one-half of the property bounded on the City Island Railroad Company;

Now therefore it is

*Resolved*, That the change of motive power from horse power to overhead electric current to be operated in connection with the American Monorail System perfected by Howard Hanson Tunis, as applied for by the City Island Railroad Company, be and the same hereby is, in all respects approved upon the route as follows:

Beginning at a junction with the Pelham Park Railroad at or near Marshall's corner on the highway known as the City Island Road; thence through, along and upon the said City Island Road to and across City Island bridge; thence through, along and upon the street or highway known as Main street to a point on said street at or near the corner or intersection of Franklin avenue.

*Further resolved*, That this approval take effect only upon the City Island Railroad Company obtaining the local consents and approvals required by law and depositing the same with the Public Service Commission for the First District for examination.

**Pelham Park Railroad Company.—Application for approval of change of motive power.**

Hearing Order No. 806.  
Opinion of Counsel.  
Final Order No. 842.

In the Matter  
of the

**Application of the PELHAM PARK RAILROAD COMPANY for the approval of the Public Service Commission for the First District, of the change of motive power on the railroad of the Pelham Park Railroad Company in the borough of The Bronx, city of New York.**

HEARING ORDER No. 806  
October 27, 1908.

Under section 100 of the Railroad Law.

An application dated October 15, 1908, having been made by the Pelham Park Railroad Company under section 100 of the Railroad Law to the Public Service Commission for the First District for the approval of the Public Service Commission for the First District of a change of motive power from horse power to overhead electric current to be operated in connection with the American Monorail System, perfected by Howard Hansel Tunis.

*Ordered.*, That a hearing be had in the hearing room of the office of the Public Service Commission for the First District at No. 154 Nassau street, city of New York, at 4 P. M., November 6, 1908, at which hearing said application will be considered.

*Further Ordered.*, That five days' notice of this hearing be given by mail to the Pelham Park Railroad Company.

*Further Ordered.*, That five days' notice of this hearing be given by mail to the city of New York through the office of the corporation counsel.

*Further Ordered.*, That the annexed notice be published by said Pelham Park Railroad Company on Saturday, October 31, and on Monday, November 2, in the New York Press and in the New York Evening Post.

**PUBLIC SERVICE COMMISSION, FIRST DISTRICT.**

**PELHAM PARK RAILROAD COMPANY,**

**CHANGE TO ELECTRIC POWER.**

Application has been made to the Public Service Commission for the First District by the Pelham Park Railroad Company for the approval of a change of motive power from horse power to overhead electric current to be operated in connection with the American Monorail System perfected by Howard Hansel Tunis. A hearing upon said application will be held in the hearing room of the office of the Public Service Commission for the First District at No. 154 Nassau street, city of New York, at 4 P. M., November 6th, 1908, at which hearing said application will be considered.

Dated, New York, October 27th, 1908.

**PELHAM PARK RAILROAD COMPANY,**

By.....

See opinion of counsel in the preceding case. (Matter of City Island Railroad Company).

Hearings were held November 6th and 12th.

The following final order was issued:

**ORDER No. 842.**  
November 17, 1908.

Whereas an application, dated October 15, 1908, has been made to the Public Service Commission for the First District by the Pelham Park Railroad Company for approval of change of motive power from horse power to overhead electric power as used by the American Monorail System, and

Whereas a hearing was held before the Public Service Commission for the First District after due notice given to the city of New York and to the public by advertisement duly had in certain newspapers, to wit: the New York Press and the New York Evening Post, at which hearing testimony was taken, and at

which hearing it appeared that the change of motive power as above set forth had been consented to by the owners of more than one-half of the property bounded on the Pelham Park Railroad Company;

Now therefore it is

*Resolved*, That the change of motive power from horse power to overhead electric current to be operated in connection with the American Monorail System perfected by Howard Hansel Tunis, as applied for by the Pelham Park Railroad Company, be, and the same hereby is in all respects approved upon the route as follows:

Beginning at or near Bartow Station on the Harlem River and Portchester Railroad; thence to along and through the street known as Third street to the highway known as the Shore road; thence along and across the said Shore road to the highway known as the City Island road; thence through, along and upon the said City Island road to a junction with the City Island Railroad at or near Marshall's Corner.

*Further Resolved*, That this approval take effect only upon the Pelham Park Railroad Company obtaining the local consents and approvals required by law and depositing the same with the Public Service Commission for the First District for examination.

## ORDERS FOLLOWING APPLICATIONS FOR PERMISSION TO LAY NEW OR ADDITIONAL TRACKS AND TO CONSTRUCT EXTENSIONS.

**Brooklyn Union Elevated Railroad Company.**—Application for permission to erect an elevated railroad on the Flatbush avenue extension and for the exclusive use of two tracks on Manhattan Bridge.

Hearing Order No. 657.

Opinion of Commissioner McCarroll.  
Resolution Denying Application.

In the Matter  
of the

Application of the BROOKLYN UNION ELEVATED RAILROAD COMPANY for the right to construct an elevated road upon the extension of Flatbush avenue, and for the right to the exclusive use of two tracks upon the Manhattan Bridge.

HEARING ORDER NO. 657.

August 8, 1908.

Whereas the Public Service Commission for the First District has received applications of the Brooklyn Union Elevated Railroad Company as follows, to wit:

First—An application dated September 9, 1907, and acknowledged September 18, 1907, for the right to construct, operate and maintain four elevated railroad tracks and elevated structures in and upon the extension of Flatbush avenue, more particularly described as follows:

1. A double track elevated structure connecting with the elevated structure on Fulton street at or near the intersection with Flatbush avenue with said Fulton street, and extending northerly along the extension of Flatbush avenue over and above the elevated railroad structure in Myrtle avenue to a point distant about one hundred (100) feet north of where the northerly side of Myrtle avenue intersects what is known as the extension of Flatbush avenue where said tracks merge into the two elevated tracks next described.

2. Two elevated tracks on the structure hereinbefore described, connecting with the two elevated tracks of your petitioner on Flatbush avenue, beginning at or near a point in Flatbush avenue distant about three hundred and fifty (350) feet southerly from where the northerly line of Fulton street intersects Flatbush avenue, and extending northerly under the elevated structure on Fulton street, and over and above the elevated structure on Myrtle avenue, along and through Flatbush avenue and the extension thereof (one track of which is to be on each side of the two foregoing described tracks) at or to a point near the northerly side of Nassau street where Nassau street is intersected by the extension of Flatbush avenue, to be constructed between the tracks last described to where Flatbush avenue joins.

3. Two elevated tracks connecting with the petitioner's elevated structure turning out of Myrtle avenue and extending northerly along the extension of

Flatbush avenue, to be constructed between the tracks last described to where the same will merge into the tracks last described at a point distant about one hundred (100) feet north of Johnson street.

4. The right to construct, maintain and operate all the necessary turn-outs, sidings, switches, cross-overs and connections with its elevated structure on Flatbush avenue, Fulton street and Myrtle avenue, together with the further right to maintain all signal towers, plants, equipment, platforms and stations necessary in the operation of the said elevated road.

Second—An application verified April 21, 1908, for the right to the exclusive use of two of the tracks provided for elevated railroads upon and across the Manhattan Bridge and approaches, when constructed across the East river, together with the necessary connections, terminals, switches, sidings, turn-outs, wires and equipment for the operation of its said elevated railroad cars from the borough of Brooklyn over and across the said bridge and approaches thereto.

*Resolved*, That the said applications of the said Brooklyn Union Elevated Railroad Company be heard by and before the Public Service Commission for the First District on the 20th day of August, 1908, at 10:30 o'clock in the forenoon, and that the said Company publish a notice of said applications and of the time and place of the said hearing in the following newspapers: Brooklyn Eagle, Times, Citizen and Standard Union, published in the City of New York, on at least two separate days before said hearing and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

Hearing held August 20th.

OPINION OF COMMISSION.

(Adopted November 6, 1908.)

COMMISSIONER MCCARROLL:—

This is an application of the Brooklyn Union Elevated Railroad Company for the erection of an elevated structure and railroad on the so-called Flatbush Avenue Extension. This extension is the continuation of Flatbush avenue north of Fulton street, now partially open, and leading to the plaza of the Manhattan bridge.

The purpose of the proposed railroad is to connect with the present elevated lines on Flatbush avenue, Fulton street and Myrtle avenue, respectively.

The connection with the lines on Flatbush avenue is to be made at a point about 300 feet to the south of Fulton street. The tracks of this are to pass under the elevated railroad on the latter and so continue along the Flatbush Avenue Extension to a point at which a common level will be reached.

The connection with the Fulton street line is to be made at or near the intersection of these two streets.

The third connection is to be made with the lines on Myrtle avenue about 100 feet north of Johnson street to reach the same level.

The application is for a structure to carry four tracks, with the necessary turn-outs and switches, and a station with double platforms, at or near the crossing at Myrtle avenue, where the existing line of the same company shall also pass underneath the structure upon Flatbush Avenue Extension. At the point where the four tracks reach Nassau street they are merged into two to connect with and pass over two tracks of the Manhattan Bridge, which are a set of the tracks on its lower level.

Another application was also later made to the Commission by the same company for the exclusive use of these two bridge tracks and is now pending before the Commission. Some consideration must be given to that in this connection.

The conditions embraced in this application are, as stated:

a structure carrying four tracks throughout the length of the new Flatbush Avenue Extension,

and in connection with these, under the other application,

the exclusive rights to two tracks across the Manhattan Bridge.

These are to reach to the terminal in Manhattan borough.

Formal consideration of this application was deferred until some months ago, upon the request of the railroad company to the Commission, but in the meantime it was made the subject of investigation and study by your committee and in conference with Commissioner Bassett. About the beginning of the summer the railroad company signified its readiness to have it proceeded with.

Following this a public hearing was given on August 20th. A large number of citizens and representatives of civic organizations were present and addresses were made pro and con. A copy of the record accompanies this report.

Perhaps first among the objections raised to the granting of this application is urged that the opening of the Flatbush Avenue Extension creates an opportunity that should be improved for a fine avenue and which the construction of the railroad would frustrate. The avenue traverses a central part of the borough in a line with the Manhattan Bridge on one end, passing the Plaza at Prospect Park and continuing almost directly to the ocean at Jamaica Bay, where the Federal government is undertaking large improvement of the harbor.

As it now exists it is a straight avenue 120 feet wide. It is free from obstruction except for a distance of about six blocks, from Fulton street to Fifth avenue, where there is a section of the elevated railroad. The removal of this to some other street has long been urged by civic organizations and many citizens. The accompanying map shows the direction and extent of the street. These give manifest point and force to the contention that the avenue and extension should be clear for an important thoroughfare, as described. The Borough of Brooklyn has no other street of this character. It would be perhaps also of no less importance and benefit to the city at large. It would provide a wide direct highway from the North river through Canal street across the Manhattan Bridge and so to the ocean. This would make an avenue unrivalled in extent and possibilities of most desirable development, which at some points, notably adjoining the Plaza, has already begun.

While it may be said by some that in a city's development the aesthetic should be subordinated to practical necessity, the considerations in this case are by no means wholly from that side, for it would appear that the erection of an elevated railroad structure upon the extension of this avenue must almost certainly greatly impair, if not practically destroy it for use as a general public thoroughfare and render it undesirable as a business section. The roadway is but 80 feet in width from curb to curb, the sidewalks being 20 feet each. The elevated structure to accommodate the traffic intended necessitates not less than the four tracks applied for. These would require a width of about 60 feet. According to one plan outlined the structure would be supported by columns in two rows about 40 feet apart, which would leave a clearance of less than 20 feet between column and sidewalk. Another plan proposes that the columns be placed in the center of the roadway with supports in arch form from the edge of the sidewalk on either side of the roadway. Whatever might be the construction one row or more of columns would be unavoidable with the resulting obstruction and defacement.

As against this it is suggested that the structure could be erected with the objectionable features of the usual elevated type modified or avoided and of a character of more architectural symmetry. A structure of concrete and with a solid roadbed to render it as noiseless as possible has also been proposed. It should be pointed out that such methods greatly increase the cost of construction. Our engineer estimates the additional at 75 to 100 per cent more than the type of structure which now exists. With the amount involved in damages to property to be added to this the cost would reach a figure at least as high as a subway and possibly higher.

The incidental question is thus raised, namely, as to how far, if at all, the city should yield on the ground of cost in abatement of the requirement that the construction of all further elevated roads should be of the best type. Doubtless it would be generally agreed that in the case of any such, more attention should be given to these features than heretofore and, perhaps, that no other kind of elevated construction should be permitted.

The style of structure is a question that might properly follow the determination as a point of policy, as to whether *any* elevated railroad should be built on the avenue, but the considerations presented go to that point. In this case the objection might not have such force were the requirement not for a structure that would occupy so much of the roadway as a four track one necessarily would. But less would be entirely inadequate and it would seem evident that one of such dimension upon this avenue would, as stated, largely impair, and probably destroy, its use as a public thoroughfare.

There is, however, a still more serious obstacle to the granting of this application in the fact that it contemplates the operation of the elevated structure on the extension and across the Manhattan Bridge *only to its terminal in Manhattan Borough*. This is but to create there another condition similar to that which has existed at the Manhattan terminal of the Brooklyn Bridge, with the accentuated difficulty that it would not be a focal point of distribution of passengers as is the City Hall. The underground loop line and other means of transportation would, it is true, be near, but no connections beyond it are proposed in the application. This perpetuates the misconception and the treatment of bridges simply as means of crossing the river instead of as portions of thoroughfares. It contemplates the river as the bounds of Manhattan and of Brooklyn. It accentuates the idea of division and separation as against the idea and fact of the unity of the city, which on the other hand the treatment of the bridges as thoroughfares emphasizes and promotes.

To your committee those objections of themselves seem insurmountable.

Added to them, however, are still other considerations which should be stated. Among them it is to be noted that the application is for the exclusive rights to the tracks applied for on the bridge. Your committee feels a strong aversion to tying the city, certainly for any prolonged period, by any exclusive grant to one company. Moreover, the granting of this application to the Brooklyn Union Elevated Railroad Company would also put the three bridges, which are the great arteries of travel between the Boroughs of Manhattan and Brooklyn, mainly and probably permanently in the hands of one company, especially so with its surface lines also occupying them. Of itself, this probably would not be a controlling objection, though it must be considered in connection with the fact that the Manhattan bridge will probably continue to be the central and most important, as it is the most capacious of the bridges, and so to speak, the key of the interborough transit situation.

Furthermore, it is also the route and the trunk of the six track Fourth avenue subway, already approved by the Board of Estimate and Apportionment and the contracts awarded by the Commission, awaiting the further action of the Board of Estimate and Apportionment for construction to be begun. This Fourth avenue subway route constitutes the connection of the present Centre street subway loop which, when extended underneath the East river, as planned, will connect through the lower portion of Brooklyn with the line across the Manhattan bridge in that borough. The Canal street subway across Manhattan Bridge to the North river is also, as planned, a part of the Fourth avenue route. Both of these should be pushed to completion at the earliest possible date.

Your committee has given consideration to the remonstrances lodged with the Commission by important bodies and citizens against the granting of any permanent rights over the Manhattan bridge and approaches on the ground that the city should itself hold this portion in its immediate control. Regarding this latter it may be said that against any important dangers from that source at least partial safeguard is provided in existing statutes.

Your committee may admit that the weight and logical conclusions of these considerations have been recognized with reluctance. The need of increased transportation facilities, with ample provision for the present urgent necessities and for those of the future, is so great that it naturally inclines to a hospitable disposition towards the application, especially so in view of the urgent need for the earliest possible provision for the use of the Manhattan Bridge. Notwithstanding this your committee is constrained to report adversely for the reasons set forth.

In doing so, it is pertinent for your committee to state that a refusal of this application does not necessarily foreclose the opportunity for the applying company or for other proposals to be made.

There are other means of approach to the Manhattan Bridge than over the surface of the Flatbush Avenue Extension. The Brooklyn Union Elevated Railroad Company itself, has already rights upon other streets by which the terminal of the bridge might be reached and upon which property damages have probably been already paid. Approach might also be made through private property and probably at a cost not greatly, if at all, exceeding that involved in the use of this

extension. Again it might perhaps even more advantageously be gained through a subway as already intimated. It may also here be pointed out (and perhaps in view of the reiterated statements of some of our city officials attention should be specially directed to it) that opportunity for such approach is offered in the possible use of a portion of the Fourth avenue subway. This Commission has facilitated and urged its construction by all the means at its disposal. This to the great disappointment and disadvantage of our citizens has been prevented by injunction obtained from the courts upon the admitted initiative of the comptroller of the city. Your committee ventures expression of the hope that the comptroller of the city and the board of estimate will use all possible effort to have this injunction removed at the earliest date so that this most important work may proceed. This subway not only makes provision for the use of the Manhattan bridge, but with its connections as planned it offers facilities in a comprehensive way for connections with practically all the railroad systems of the city. It should be emphasized that in any plan whatever proposed provision of a similar character for traffic connections should be made. The need of the city is that its various systems should be articulated and this should be a sine qua non. The valuable privileges embraced in the use of this bridge should carry the fullest compensatory benefits to the public in the convenience of travel offered.

Your committee does not overlook the advantages that are obvious in the plan proposed in this application, but the objections pointed out, and others which might be added, to the granting of it seem so conclusive that time need not be taken here for discussion upon the other side. Neither for the same reason is it necessary to discuss the other points embraced.

Your committee in conclusion recommends the adoption of a resolution denying the present application.

Commissioner McCarroll thereupon moved that the report be adopted.

Ayes — Chairman Wilcox, Commissioners McCarroll, Maltbie, Eustis.

Nayes — None.

Commissioner Bassett stated that he refrained from voting for the adoption of the report, although he desired to express his concurrence in the conclusion reached.

Commissioner McCarroll thereupon moved that the following resolution be adopted:

*Resolved*, That the application of the Brooklyn Union Elevated Railroad Company for the right to construct elevated tracks on Flatbush avenue extension and for certain rights on the Manhattan Bridge be denied.

Ayes — Commissioners, Wilcox, McCarroll, Bassett, Maltbie, Eustis.

Nays — None.

Carried.

### Long Island Railroad Company.— Application for authorization to lay and operate additional tracks on Atlantic avenue.

Hearing Order No. 655.

Hearing Order No. 787.

In the Matter

of the

Hearing on motion of the Commission upon the application of the LONG ISLAND RAILROAD COMPANY for authorization to lay and operate two additional tracks on the surface of its right of way on Atlantic avenue, between Flatbush avenue and Shepard avenue, and also on certain other portions of the Atlantic avenue roadway on each side of said right of way.

HEARING ORDER NO. 655.  
August 3, 1908.

Whereas the Public Service Commission for the First District has received the application of the Long Island Railroad Company, verified May 22, 1908, for the

authorization to lay and operate two additional tracks on the surface of its right of way in Atlantic avenue, between Flatbush avenue and Shepard avenue, in the borough of Brooklyn, city of New York, and also in the following portions of the roadway of Atlantic avenue on each side of said right of way in order to make such tracks continuous, namely:

- Leaving said right of way at a point forty feet westerly from the westerly side of Bedford avenue, and thence running with a single track on each side of the line of said right of way, and the inner rail of said tracks to be about four feet distant therefrom, to a point about 150 feet easterly from the easterly line of Nostrand avenue; and thence curving inward intersecting the said right of way and connecting with the tracks thereon.

- Leaving the said right of way at a point about opposite the easterly line (if extended) of Columbus place, and running with a single track on each side of the line of said right of way, and the inner rail of said tracks to be about four feet distant therefrom, to a point about opposite to the easterly side of Cooper place (if extended); and thence curving inward intersecting the said right of way and connecting with the tracks thereon.

- Leaving the said right of way at a point approximately at the center of Stone avenue or Eastern Parkway Extension, and running with a single track on each side of the line of said right of way, to a point opposite the easterly curb line of Atlantic avenue (excepting the portion of the southern side of Atlantic avenue between Snedeker and Alabama avenues, occupied by the existing tracks of the Canarsie Railroad Company, over which the Long Island Railroad Company has the right to operate); thence curving inward into the said right of way and connecting with the tracks laid thereon.

- Together with the right to erect and maintain the necessary poles, wires, and appurtenances.

Such parts of said tracks as are to be laid upon the surface of said right of way to be laid over the tunnels and under the elevated structures which have been constructed upon portions of such right of way as in said application mentioned.

*Resolved.* That the said application of the said Long Island Railroad Company be heard by and before the Public Service Commission for the First District on the 13th day of August, 1908, at 10:30 o'clock in the forenoon, and that the said company publish a notice of said application, and of the time and place of said hearing, in the following newspapers published in the city of New York: Brooklyn Eagle, New York Times, on at least three separate days before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

The Company withdrew its petition for the purpose of amending it. The above order was rescinded August 11th. The company submitted an amended petition to the Commission October 23d upon which the following order was issued:

In the Matter  
of the

Application of the LONG ISLAND RAILROAD COMPANY to the Public Service Commission to fix and determine routes for connections and extensions and authorization of additional tracks and terminal and other facilities on streets, including Atlantic avenue, in the city of New York, and for the operation of the same and the transportation of passengers in the city of New York.

HEARING ORDER NO. 787.  
October 23, 1908.

Whereas, the Public Service Commission for the First District has received the amended petition of the Long Island Railroad Company, verified October 7, 1908, as lessee of the Nassau Electric Railroad Company and as lessee of the New York, Brooklyn & Manhattan Beach Railway Company and of part of the railroad of the Brooklyn & Rockaway Beach Railroad Company, that the Commission fix and determine the routes by which it may connect with other railways, the stations thereof and with ferries, and to extend its lines within the city of New York, and to authorize it to lay additional tracks on, above, under and contiguous to a portion of the routes of the said railways respectively within said city, to acquire terminal and other facilities necessary for the accommodation of the traveling public on the streets hereinafter mentioned, and to lay its tracks and operate its said railways to terminals within the said city, and to transport over the same passengers by electric power, as follows, namely:

(a) Two additional railroad tracks beginning at a point near the westerly face of the abutment located upon a strip of land between the roadways of Atlantic avenue near Shepard avenue; thence westward upon the surface of said strip to a point about two hundred and ninety (290) feet easterly of the abutment between Williams and Snedeker avenues.

(b) Thence curving outward into the roadways of Atlantic avenue and running with a single track on each side of and substantially parallel with the supports of the elevated railroad, of the said abutment and of the cut lying west of the said abutment, to a point approximately one hundred and twenty-five (125) feet westerly of the westerly end of said cut and between Stone avenue and Olive place; thence curving back into said strip, the northerly track to be connected at a point west of Van Sinderen avenue with the north track of the main line operated by the petitioner, the southerly of said tracks connecting with the northerly track of the said Brooklyn & Rockaway Beach Railroad Company and crossing the tracks of the New York, Brooklyn & Manhattan Beach Railway Company on Van Sinderen avenue and on Atlantic avenue.

(c) Thence continuing with a double track over and upon the surface of said strip to a point about sixty (60) feet from the easterly boundary of the cut between Cooper place and Ralph avenue.

(d) Thence curving outward and running with a single track on each side of the said cut and of the abutment and elevated structure westerly thereof to a point about three hundred and sixty (360) feet west of the westerly line of the said abutment and about opposite the east side extended of Columbus place.

(e) Thence curving inward into and upon said strip and under the elevated structure to a point about one hundred and fifty (150) feet easterly from the easterly line of Nostrand avenue.

(f) Thence curving out and running with a single track on each side of the abutment and cut extending from Nostrand avenue to Bedford avenue to approximately the westerly side of Bedford avenue.

(g) Thence curving into and upon the said strip continuing over the tunnel approximately to the center of Fifth avenue, and there connecting with the surface railroad tracks constructed in the center of Atlantic avenue west of that point.

(h) Together with the right to erect and maintain the necessary poles, wires, switches, and other appurtenances of an electrical surface passenger railroad.

*Resolved*, That the said petition be heard by and before the Public Service Commission for the First District on the 5th day of November, 1908, at 2:30 o'clock in the afternoon, and that the said company publish a notice of said application and of the time and place of said hearing in the following newspapers published in the city of New York: New York Times, and Brooklyn Eagle, on at least five separate days before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

Hearings held November 5th and 9th. This matter is involved in litigation in the suit brought by the Nassau Electric Railroad Company against the Long Island Railroad Company, the Commission, the Board of Estimate and Apportionment and the City of New York. An order to show cause, restraining the Long Island Railroad Company from taking any action in respect of constructing or operating such additional tracks was issued. The argument upon the return of the order to show cause was adjourned to January 4, 1909.

**Long Island Railroad Company.—Application for permission and approval of a change in location of tracks in the borough of Queens.**

Hearing Order No. 661.  
Opinion of Commissioner McCarroll  
Final Order No. 853.

In the Matter  
of the

Application of the LONG ISLAND RAILROAD COMPANY for the permission and approval of the Public Service Commission to a change in the location of that portion of the main line of its railroad and tracks between a point 400 feet west of Ascan avenue and a point 700 feet east of Lefferts avenue, in the borough of Queens, city of New York, pursuant to section 53 of the Public Service Commissions Law and to the provisions of the Railroad Law.

HEARING ORDER NO. 661.  
August 3, 1908.

Whereas the Public Service Commission for the First District has received the petition of the Long Island Railroad Company, dated July 27, 1908, and acknowl-

edged July 28, 1908, praying the permission and approval of said Commission to the alteration, change, and relocation of that portion of the route of its main line of railroad between a point about 400 feet west of Ascan avenue and a point about 700 feet east of Lefferts avenue, being a distance of about 5,400 feet, in the Second ward of the borough of Queens, city of New York, in accordance with the consent and approval thereto heretofore granted by the board of estimate and apportionment of the city of New York.

*Resolved*, That the said application of the said Long Island Railroad Company be heard by and before the Public Service Commission for the First District on the 20th day of August, 1908, at 2:30 o'clock in the afternoon, and that the said company publish a notice of said application and of the time and place of said hearing in the following newspapers: Brooklyn Times, and New York Press, published in the city of New York, on at least three separate days before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

Hearing held August 20th.

OPINION OF COMMISSION.

(Adopted October 20, 1908.)

COMMISSIONER McCARROLL:—

Upon receipt of the petition of the Long Island Railroad Company a hearing order was made providing for notice to the city of New York and a publication of notice to property owners and others interested, which was published three times in the New York Press and in the Brooklyn Times. There was no appearance at the hearing except on the part of the Long Island Railroad Company and it developed at the hearing that this cut-off known as the Maple Grove cut-off was a straightening of the main line of the Long Island Railroad Company which did away with a number of grade crossings and which rendered easier the grades. The property to be taken was secured by agreement with the Cord Meyer Development Company and the estate of Aldrich H. Mann. Under this contract the railroad is to convey to the property owners named the old location of the railroad tracks. It was stated at the hearing that the railroad company was by its agreement with Mr. Mann obliged to build three bridges to carry the streets over the tracks before they could acquire the property. The strip to be acquired varies from about 150 feet to 230 feet. It is proposed to build four tracks at the present time but arrangements are being made for the construction of six tracks. The old right-of-way contains two tracks. The company proposed to go to work as soon as this application is granted.

After long negotiations between the city of New York and the railroad company, an agreement has been entered into as a result of which the city is satisfied that the rights of the people are amply protected and the application to the Public Service Commission is due in part to a provision in the agreement executed by the Long Island Railroad Company and accepted by the city which requires the approval of the Public Service Commission to change of location.

I am of the opinion that the change will result in the increased efficiency of the Long Island Railroad Company due to the shortening of the line, the cutting out of a curve and the elimination of a number of grade crossings. In this opinion the engineers of the board of estimate and apportionment, namely, Mr. Lewis and Mr. Nichols, have concurred. The proposed resolution submitted herewith contains a full recital of the facts. I submit with this memorandum a blue print showing the cut-off proposition.

Thereupon the following final order was issued:

ORDER No. 853.  
October 20, 1908.

Whereas, a petition, verified July 28, 1908, by the Long Island Railroad Company, was duly filed with the Public Service Commission for the First District, asking for the permission and approval of the Public Service Commission for the First District to the alteration, change and relocation of that portion of the route of the main line of the Long Island Railroad Company between a point four hundred feet west of Ascan avenue and a point seven hundred feet east of Lefferts avenue, in the borough of Queens, city of New York; and

Whereas, the Public Service Commission for the First District by order dated August 3, 1908, appointed August 20, 1908, at 2:30 o'clock as the time for hearing the said application; and

Whereas, pursuant to the said order for hearing and said notice a hearing was duly had on August 20, 1908, before Hon. William McCarroll, Commissioner, Arthur

180 PUBLIC SERVICE COMMISSION—FIRST DISTRICT.

DuBois, Esq., appearing for the Public Service Commission for the First District, Joseph F. Keany, Esq., appearing for the Long Island Railroad Company, there being no appearances for the city of New York or for the property owners;

And it further appearing at said hearing that notice of said application and of the time and place of the said hearing was duly published on at least three separate days before said hearing in the Brooklyn Times and in the New York Press, and that notice of the said hearing was duly served on the city of New York;

And it further appearing that the construction to be made as a result of the change and relocation of the said tracks lies within the First District;

And it further appearing that the Long Island Railroad Company at a special meeting of the board of directors held September 13, 1907, by a vote of two-thirds of all its directors, pursuant to section 13 of the Railroad Law, altered, changed and relocated that part of the main line of its railroad lying within the Second ward of the borough of Queens as above set forth, and that the said Long Island Railroad Company, pursuant to action taken at the said meeting of its board of directors, on October 4, 1907, duly filed in the office of the clerk of Queens county a survey, map and certification of said alteration, change and relocation, and that the said Long Island Railroad Company on or about October 18, 1907, by duly verified petition applied to the board of estimate and apportionment of the city of New York for the approval by said city of the said alteration, change and relocation of the route of its main line between the points aforesaid, and that on June 26, 1908, the said board of estimate and apportionment unanimously adopted a resolution granting its consent and approval to the said alteration, change and relocation of the route and prescribed a form of proposed agreement:

And it further appearing that on October 16, 1908, the board of estimate and apportionment unanimously adopted and accepted a certain agreement as a supplement to the agreement provided for in the resolution of June 26, 1908, requiring the railroad company to execute and deliver both agreements as a condition precedent to the construction by the railroad company of its line of railroad on the change of route as authorized by the resolution of June 26, 1908:

And it further appearing that both said agreements were executed by the Long Island Railroad Company on November 4, 1908, together with the bond of the surety company, as required by the city of New York;

And it further appearing after the said hearing that the construction necessitated by the change and relocation of the route of the Long Island Railroad Company, as shown in a certain survey and map attached to the agreement between the Long Island Railroad Company and the city of New York, dated November 4, 1908, and entitled "agreement with respect to alteration, change and relocation of the route of the main line of the company in the Second ward of the borough of Queens," and that the exercise of the franchise or privilege is necessary or convenient for the public service;

Now therefore it is

*Resolved*, That the Public Service Commission for the First District permit and approve the alteration, change and relocation of that portion of the route of the main line of the Long Island Railroad Company between a point about four hundred feet west of Ascan avenue and a point about seven hundred feet east of Lefferts avenue, being a distance of about fifty-four hundred feet, in the Second ward of the borough of Queens, city of New York, in the manner set forth in a certain survey and map of the Long Island Railroad Company, dated January 14, 1908, and made to accompany petition dated October 7, 1907, to the board of estimate and apportionment for the consent of the city pursuant to section 13 of the Railroad Law, which survey and map is annexed to and made part of a certain agreement between the Long Island Railroad Company and the city of New York, dated November 4, 1908, and entitled "agreement with respect to alteration, change and relocation of the route of the main line of the company in the Second ward of the borough of Queens."

*Further Resolved*, That the Public Service Commission for the First District permit and approve the exercise of the franchise or right necessary to the operation of its road upon that portion of its route which has been altered, changed or relocated as above set forth, as shown by the said survey and map, dated January 14, 1908, which survey is filed in the office of the Public Service Commission for the First District.

Nassau Electric Railroad Company.—Application for permission to construct extensions in Kings county.

In the Matter  
of

An application of the NASSAU ELECTRIC RAILROAD COMPANY for the approval of the Commission of the construction by said company of an extension of its street railroads upon streets in Kings county.

ORDER No. 491.  
May 13, 1908.

Whereas, the Public Service Commission for the First District has received the petition of the Nassau Electric Railroad Company verified May 6, 1908, praying

that the permission and approval of the Commission be granted for the construction by the said Nassau Electric Railroad Company of an extension of its street surface railroads upon the streets, roads, avenues and highways described as follows, to wit:

"Along and upon Flatbush avenue from the present terminus of its track on the easterly side of said street between Atlantic avenue and Fourth avenue, to Fourth avenue, thence along Fourth avenue to Atlantic avenue, and along Atlantic avenue to Flatbush avenue by single or double track street surface electric railroad to be operated by the overhead single trolley system, together with the necessary poles, wires and equipment, with connections at Flatbush avenue and Fourth avenue and at Flatbush avenue and Atlantic avenue with tracks of the Brooklyn City Railroad Company."

*Resolved*, That the said petition of the said Nassau Electric Railroad Company be heard by and before the Public Service Commission for the First District on the 18th day of May, 1908, at 10:30 o'clock in the forenoon, and that the said company publish a notice of the said application and of the time and place of the said hearing, setting out the names and description of the streets, roads, avenues and highways in and upon which it is proposed to construct and operate such extension, in the following newspapers published in the borough of Brooklyn, city of New York, at least three days in succession prior to the said hearing and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing: Brooklyn Eagle, Brooklyn Citizen.

Hearings were held May 18th and 20th. The company had made application to the Board of Estimate and Apportionment for a franchise. Action by the Commission deferred until some action shall have been taken by the said board.

### Ocean Electric Railway Company.—Application for consent and approval to the relocation of tracks at Rockaway park.

Hearing Order No. 583.  
Final Order No. 609.

In the Matter  
of the

Petition of the OCEAN ELECTRIC RAILWAY COMPANY praying the consent and approval of the Commission to the relocation of certain street railroad tracks said to be upon private property, in the borough of Queens.

ORDER No. 583.  
June 16, 1908.

Whereas, the Public Service Commission for the First District has received the petition of the Ocean Electric Railway Company, verified May 8, 1908, praying that the consent and approval of the Commission be granted to the relocation of its tracks and the operation of its railroad in accordance with the petition as being necessary and convenient for the public service, being an extension of its street surface railroads said to be upon private property in the borough of Queens, in the city of New York, described as follows, to wit:

Beginning at the intersection of Fifth and Washington avenues at Rockaway Park in the Fifth ward, borough of Queens, and running thence northerly along Fifth avenue (where a single track is now in operation) to Newport avenue; thence along Newport avenue westerly to the railroad track as at present laid and operated at a point thereon west of the intersection of Lincoln avenue with said Newport avenue, it being proposed to locate, maintain and operate a double track railroad, with the necessary turnouts, switches and appurtenances on Fifth avenue and Newport avenue as aforesaid.

*Resolved*, That the said petition of the said Ocean Electric Railway Company be heard by and before the Public Service Commission for the First District on Saturday, the 20th day of June, 1908, at 10:30 o'clock in the forenoon, and that the said company publish a notice of said application, and of the time and place of the said hearing, setting out the names and description of the streets, roads, avenues and highways, in and upon which it is proposed to construct and operate such extensions, in the following papers, the Brooklyn Daily Eagle, the Brooklyn Daily Times, published in the borough of Brooklyn, city of New York, at least three days in succession prior to the said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of the said hearing.

Hearing held June 20th.

The following final order was issued:

In the Matter  
of the

Application of the OCEAN ELECTRIC RAILWAY COMPANY for the consent and approval of the Commission to the relocation of its tracks and the operation of its railroad, being an extension of its street surface railroads said to be upon private property at Rockaway park, in the Fifth ward, Borough of Queens, city of New York, upon certain streets, roads and avenues therein.

ORDER NO. 609.  
June 26, 1908.

After Order for Hearing No. 583, dated June 16, 1908.

Whereas the Ocean Electric Railway Company has filed with the Public Service Commission for the First District its application, verified May 8, 1908, praying that the consent and approval of the Commission be granted (1) to the relocation of its tracks as a street surface railroad upon property alleged to be private property, in the borough of Queens, in the city of New York, and (2) the operation of its railroad upon said property;

And the Commission having made an order fixing Saturday, the 20th day of June, 1908, at 10 o'clock A. M., at its rooms, No. 154 Nassau street, borough of Manhattan, city of New York, as the time and place of a hearing upon said application; and proof of publication of notice of said time and place of hearing having been made and filed with the Secretary of the Commission pursuant to the terms of said order for hearing; and the matter coming on to be heard on said June 20, 1908, upon said petition and the papers and documents filed therewith by said Ocean Electric Railway Company and other documents on file with the Secretary of the Commission; and said petitioner having duly appeared by Joseph F. Keaney, Esq., its counsel, and no one appearing in opposition; and the petitioner having submitted proof in support of said application; and it appearing that a statement was filed on June 9, 1908, and prior to the hearing of the said application, pursuant to section 90 of the Railroad Law, with the Secretary of State and with the county clerk of Queens county, that said company proposes to extend its road and to construct branches and extensions thereof upon the streets, roads, avenues, highways and private property, as follows, to wit:

Beginning on private property of the Rockaway Park Improvement Company, Limited, at Rockaway park in the Fifth ward of the borough of Queens, in the city and State of New York, at the intersection of Fifth and Washington avenues in said borough, and running thence northerly along Fifth avenue (where a single track is now in operation) to Newport avenue; thence along Newport avenue westerly to the railroad tracks of said company as at present laid and operated at a point west of the intersection of Lincoln avenue with said Newport avenue.

Now, the Commission having, after such hearing, determined that the construction of such extension and branch of such railway and the exercise by said company of the franchise and privilege of operation thereof is necessary and convenient for the public service, it is hereby

*Ordered*, That the permission and approval of the Public Service Commission for the First District be and the same hereby is given to the construction by the said Ocean Electric Railway Company of the said extension and branch of said street railroad by said company and to the operation of the same upon the route described and set forth in the said certificate for extension, filed as aforesaid with the Secretary of State and the county clerk, as hereinbefore set forth in this order, subject to the conditions hereinafter set forth and not otherwise, to wit:

The said permission and approval shall become effective only if and when the said Ocean Electric Railway Company has procured

1. By agreement or otherwise, the right to construct and operate its said extension of said railway over and upon said private property, and shall have filed the map and profile of the route thereof upon or through said private property in the office of the clerk of Queens county, in pursuance of section 90 of the Railroad Law; and

2. The consents, if any, required under the provisions of section 91 of the Railroad Law to the construction and operation of the said extension or branch of its said railway.

*And it is further ordered*, That the said application of the petitioner, Ocean Electric Railway Company, for relocation of its tracks, in so far as it prays authority to abandon or remove any part of its present tracks or alter its route, be and the same hereby is denied.

*It is further ordered*, That this order shall take effect on the 24th day of June, 1908, and shall continue in force until otherwise ordered by the Commission.

*It is further ordered*, That within five (5) days after the service upon the said Ocean Electric Railway Company of this order, said company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

**Union Railway Company of New York City.— Application for permission to construct an extension on two Hundred and Thirtieth street.**

In the Matter  
of the

**Application of the UNION RAILWAY COMPANY OF NEW YORK CITY and FREDERICK W. WHITRIDGE, as receiver, etc., of the said Union Railway Company, for the approval of street surface railway construction on Two Hundred and Thirtieth street, borough of the Bronx, city of New York.**

Under section 53 of Public Service Commissions Law.

HEARING ORDER NO. 769.  
October 7, 1908.

An application, dated October 6, 1908, having been made by the Union Railway Company of New York City and by Frederick W. Whitridge, as receiver of the Union Railway Company, under section 53 of the Public Service Commissions Law, to the Public Service Commission for the First District, for the permission and approval of the Commission to the construction of an extension on Two Hundred and Thirtieth street, borough of the Bronx, city of New York, of a street railroad, which extension lies entirely within the First District, and the said application having asked for permission and approval of such construction and of the exercise of the franchise, as necessary or convenient for the public service.

*Ordered*, That a hearing be had in the hearing room in the office of the Public Service Commission for the First District, at No. 154 Nassau street, city of New York, at 2:30 P. M., October 13, 1908, at which hearing the said application will be considered.

*Further ordered*, That notice of this hearing be given by mail to the Union Railway Company, to Frederick W. Whitridge, as receiver of the said Union Railway Company, to the New York Central & Hudson River Railroad Company, to the city of New York, to the corporation counsel, and to the following property owners, being the owners of all the property on Two Hundred and Thirtieth street on the line of the proposed extension from Broadway to Bailey avenue, in the borough of the Bronx: Emma L. Moller, Cortlandt Godwin, George G. Godwin, Raynor Godwin, Waldo S. Godwin and Ada Godwin Randall.

Hearing held October 13th.

**ORDERS FOLLOWING APPLICATIONS FOR APPROVAL OF AGREEMENTS, CONTRACTS AND LEASES.**

**Central Crosstown Railroad Company— New York City Railway Company— Metropolitan Street Railway Company.— Application for approval of agreement for operation of road under modification of lease.**

Hearing Order No. 622.  
Hearing Order No. 622a.  
Opinion of Commissioner Eustis.  
Final Order No. 637.

In the Matter  
of the

**Application of the CENTRAL CROSSTOWN ROAD COMPANY for approval of an agreement for the operation of its said road for a period of one year from April 30, 1908, by Adrian H. Joline and Douglas Robinson, as receivers.**

HEARING ORDER NO. 622.  
July 6, 1908.

Whereas the Public Service Commission for the First District has received the application of the Central Crosstown Railroad Company, bearing date May 18,

1908, praying the approval of the Commission to an agreement for the operation of its said road under modification of the lease of that company to the Metropolitan Street Railway Company, dated February 8, 1904, by the receivers of the New York City Railway Company and the Metropolitan Street Railway Company, as shown by a letter of said receivers bearing date April 30, 1908, and accepted by the Central Crosstown Railroad Company by letter bearing date May 1, 1908.

*Resolved*, That the said application of the said Central Crosstown Railroad Company be heard by and before the Public Service Commission for the First District on Friday, July 10, 1908, at 10:30 o'clock in the forenoon, at the office of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers, namely, New York Herald, New York Press, The Evening Mail, published in the borough of Manhattan, in the city of New York, at least two days in succession before said hearing, and file proof of such publication with the Secretary of this Commission on or before the opening of said hearing.

The company not having made the publication required by the above order, a new hearing order, No. 622a, was issued:

HEARING ORDER No. 622a.

July 10, 1908.

Whereas the Public Service Commission for the First District has received the application of the Central Crosstown Railroad Company, bearing date May 18, 1908, praying the approval of the Commission to an agreement for the operation of its said road under modification of the lease of that company to the Metropolitan Street Railway Company, dated February 8, 1904, by the receivers of the New York City Railway Company and the Metropolitan Street Railway Company, as shown by a letter of said receivers bearing dated April 30, 1908, and accepted by the Central Crosstown Railroad Company by letter bearing date May 1, 1908.

*Resolved*, That the said application of the said Central Crosstown Railroad Company be heard by and before the Public Service Commission for the First District on Monday, July 13, 1908, at 10:00 o'clock in the forenoon, at the office of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, and that the said company publish a notice of the said application and of the time and place of the said hearing in the following newspapers, namely, New York Herald and New York Press, published in the borough of Manhattan, in the city of New York, on at least two days before said hearing, and file proof of such publication with the Secretary of the Commission on or before the opening of said hearing.

Hearing held July 13th.

OPINION OF COMMISSION.

(Adopted July 14, 1908.)

COMMISSIONER EUSTIS:

The Central Crosstown Railroad Company, a street surface railroad in the city of New York, leased its road and property to the Metropolitan Street Railway Company by lease bearing date February 8, 1904, for 999 years, the lessee to keep the property in repair, pay taxes, rentals of leased lands, interests upon funded debt, and the fixed charges of the lessor and 15 per cent upon the capital stock of the lessor (\$600,000). The present application is based upon the proposition of the receivers, Messrs. Adrian H. Joline and Douglas Robinson, that if the Central Crosstown Company would release the receivers from the obligation to pay 15 per cent upon the stock, they would continue to operate the property under the lease, paying the remainder of the stipulated rental, the arrangement to continue for at least one year or until the close of the receivership if sooner terminated. The Central Crosstown Railroad Company have accepted the proposition without prejudice to any claim which it may have by reason of the operation of its property by the receivers up to May 1, 1908, and also without prejudice to any claim for breach of contract, or otherwise, which the company may have against the Metropolitan Street Railway Company and the New York City Railway Company, or either of them, as a result of default under the original lease.

It is provided by the Railroad Law, section 78, that any railroad corporation or any corporation owning or operating any railroad may contract with any other such corporation for the use of their respective roads or routes, or any part thereof, and thereafter use the same in such manner and for such time as may be prescribed in such contract, and that if such contract shall be a lease of any such road and for a longer period than one year, such contract shall not be binding or valid unless approved by the votes of stockholders owning at least two-thirds of the stock of each corporation.

It is also provided by the Public Service Commissions Law, section 54, that no franchise nor any right to or under any franchise to own or operate a railroad or street railroad shall be assigned, transferred or leased, or shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract or agreement shall have been approved by the proper Commission.

The company accordingly presented copies of the correspondence evidencing the proposition of the receivers and the reply of the company to the Commission to be filed, and for approval if the same should be required, and the matter accordingly came on for hearing to-day.

It appeared that the Central Crosstown Railroad Company, has acquired by use of its special funds, and now owns about eighty new cars, which are in the possession of the receivers, Messrs. Joline and Robinson, but are marked with the name of the company and are capable of identification in the hands of the receivers.

It seems to me that in the public interest the proposition of the receivers to continue the operation of the road under the lease, with the modification of the rental, which merely affects the dividend upon stock of the Central Crosstown Railroad Company, is one which, having been accepted by that company, should have the approval of the Commission. It is necessarily limited to the period of one year at the end of which time, unless the receivership is sooner terminated, negotiations can be instituted with the receivers as to the terms of a continuance of the arrangement.

Commissioner Maltbie — "In voting for this resolution, I wish to say that I do so principally because the modified lease will increase by about \$90,000 the funds in the hands of the receivers available for improvements in equipment and service, which are so greatly needed. I do not consider that the approval of this modification by the Commission commits the Commission in any way to an approval of the other provisions of the lease. If any question should ever arise in which the original lease or the modified lease shall be a factor, I shall consider that the Commission is entirely free to act, and that the approval now given does not bind the Commission in any way whatever."

The Chairman — "I concur in what Commissioner Maltbie says."

Thereupon the following final order was issued.

**FINAL ORDER No. 637.**

July 14, 1908.

Whereas, The Central Crosstown Railroad Company filed with the Public Service Commission for the First District its application, bearing date May 18, 1908, praying the approval of the Commission to the terms of an agreement as to the right of Adrian H. Joline and Douglas Robinson, as receivers, to operate the property of said Central Crosstown Railroad Company for a period of one year, as shown by a letter of said Adrian H. Joline and Douglas Robinson, receivers, bearing date April 30, 1908, and a letter of said Central Crosstown Railroad Company, bearing date May 1, 1908; and

Whereas, the said Public Service Commission for the First District did thereupon, by Order No. 622-A, adopted July 10, 1908, direct the said application to be heard on Monday, July 13, 1908, at 10:00 o'clock in the forenoon, and that said applicant publish a notice of said application and of the time and place of the said hearing in the manner and as provided in and by said order, and that the said applicant did thereupon cause notice of said application and of the time and place of the said hearing to be published in pursuance of said order, and did file proof thereof with the Secretary of the Commission before the opening of the said hearing, and the matter coming on to be heard on said July 13, 1908, at 10:00 o'clock in the forenoon, upon the said application, Mr. Commissioner Eustis presiding, and said Central Crosstown Railroad Company having appeared by Joseph P. Cotton, Esq., and proof of the service of the said order upon Adrian H. Joline and Douglas Robinson, receivers, having been duly made and filed, and no one appearing in opposition, and the Commission having taken testimony and duly heard and considered said application, it is hereby

*Ordered*, That said agreement be and the same hereby is approved by the Public Service Commission for the First District, and that this order and approval take effect as of May 1, 1908, and continue in force for a period of one (1) year from and after said date.

**Canarsie Railroad Company—Brooklyn Union Elevated Railroad Company.—Application for approval of contract.**

Case No. 1009, Hearing Order.  
 Opinion of Commissioner Bassett.  
 Case No. 1009, Final Order.

In the Matter  
 of the

Application for the approval of the proposed contract between the CANARSIE RAILROAD COMPANY and the BROOKLYN UNION ELEVATED RAILROAD COMPANY.

**HEARING ORDER.**  
**CASE No. 1,009,**  
**December 11, 1908.**

Whereas, the Public Service Commission for the First District has received the application of the Canarsie Railroad Company and the Brooklyn Union Elevated Railroad Company, dated December 2, 1908, praying the approval of a proposed contract of lease dated July 1, 1908, and executed on December 3, 1908;

Now therefore it is

*Ordered*, That the application of the Canarsie Railroad Company and of the Brooklyn Union Elevated Railroad Company for the approval of the Public Service Commission for the First District of the proposed contract of lease annexed to the said application be heard by and before the Public Service Commission for the First District on the 22d day of December, 1908, at 2:30 o'clock in the afternoon, in the hearing room of the Public Service Commission for the First District, No. 154 Nassau street, borough of Manhattan, city of New York, and that the said Canarsie Railroad Company and the said Brooklyn Union Elevated Railroad Company publish a notice of said application and of the time and place of said hearing in the following newspapers, The Brooklyn Times and The Brooklyn Daily Eagle, published in the city of New York, on at least two separate days before said hearing and file proof of such publication with the Secretary of the Public Service Commission for the First District on or before the opening day of said hearing.

Hearing held December 22d.

**OPINION OF COMMISSION.**

(Adopted December 31, 1908.)

**COMMISSIONER BASSETT:**—

The two above-named companies applied to the commission under section 54 of the Public Service Commissions Law for the approval of a proposed lease by the Canarsie Railroad Company to the Brooklyn Union Elevated Railroad Company. The hearing was duly advertised in accordance with the order of the Commission. No one appeared at the hearing to object to the lease. The lease provides that the Brooklyn Union Elevated Railroad Company shall operate the Canarsie Railroad Company's line between Vesta avenue and Canarsie in conjunction with the former's other lines at five cents fare. The term of the lease is for one year from July 1, 1908. The lease has already been executed by the parties, but has not been valid or of any force or effect whatever until approved by the Commission. The rental paid is made up as follows: All the taxes and water rates becoming a lien upon the said property during the term of the lease, including the taxes payable on the first Monday of October, 1908, the reasonable administration expenses, and in addition all interest accruing and payable by the lessor during the term of the lease on all indebtedness incurred by the lessor in and about the conversion of said railroad to an electric railroad and for the reconstruction and equipment of same, the rate of said interest, however, not to exceed six per cent per annum. In the year 1907 substantially the same lease was in effect, the main difference being that during that year the amount of interest paid was not to exceed five per cent. During the year ending June 30, 1908, the interest thus constituting part of the rental amounted to \$54,509.49.

Inasmuch as this contract is for a short term, provides for a five cents fare from Canarsie to Manhattan, does not contain any provisions that appear to be unduly onerous to either company and meets with no objection from outside parties, I recommend that a certificate of approval be issued.

Thereupon the following final order was issued:

CASE No. 1,009, FINAL ORDER.

December 31, 1908.

Whereas, the Canarsie Railroad Company and the Brooklyn Union Elevated Railroad Company filed with the Public Service Commission for the First District an application dated December 2, 1908, praying the approval of the Commission to the terms of a contract of lease of the Canarsie Railroad Company to the Brooklyn Union Elevated Railroad Company, which said proposed contract of lease was dated July 1, 1908, and was executed December 3, 1908; and

Whereas, the Public Service Commission for the First District did thereupon, by order adopted December 11, 1908, direct the said application to be heard on December 22, 1908, at 2:30 o'clock in the afternoon, and that said applicants publish a notice of said application and of the time and place of said hearing, and the said applicants did thereupon cause notice of said application and of the time and place of said hearing to be published as prescribed in said order, and did file proof thereof with the Secretary of the Commission, and the matter coming on to be heard on December 22, 1908, before Mr. Commissioner Bassett presiding, said applicants having appeared by A. M. Williams, Esq., and no one appearing in opposition, and the Commission having taken testimony and duly heard and considered said application;

Now therefore, it is

Ordered, That the application of the Canarsie Railroad Company and of the Brooklyn Union Elevated Railroad Company for the approval by the Public Service Commission for the First District of the proposed contract of lease, by which the said Canarsie Railroad Company is leased to the Brooklyn Union Elevated Railroad Company, be and the same hereby is granted, and the said contract of lease as submitted to the Public Service Commission for the First District be, and the same hereby is in all respects approved.

**Third Avenue Railroad Company — Kingsbridge Railway Company.— Application for approval of an agreement.**

Hearing Order No. 780.  
Opinion of Commissioner Eustis.  
Final Order Case 780.

In the Matter  
of the

Application of the THIRD AVENUE RAILROAD COMPANY and FREDERICK W. WHITRIDGE, as Receiver of the said Third Avenue Railroad Company, for the approval of an agreement entered into between said receiver and the Kingsbridge Railway Company.

HEARING ORDER No. 780.  
October 13, 1908.

Under section 54 of the Public Service Commissions Law.

"Operation of Third Avenue Railroad Company over tracks of Kingsbridge Railway Company."

An application, dated October 12, 1908, having been made by the Third Avenue Railroad Company and Frederick W. Whitridge as receiver of the Third Avenue Railroad Company, under section 54 of the Public Service Commissions Law to the Public Service Commission for the First District for the approval of said Commission of an agreement entered into on the 29th day of February, 1908, between said Frederick W. Whitridge as receiver of the Third Avenue Railroad Company and the Kingsbridge Railway Company.

Ordered, That a hearing be had in the hearing room of the Commission, No. 154 Nassau street, New York city, at 2 o'clock in the afternoon of October 16, 1908, at which hearing said application will be considered.

*Further ordered.* That notice of this hearing be given by mail to the Third Avenue Railroad Company, to Frederick W. Whitridge as receiver of the Third Avenue Railroad Company, and to the Kingsbridge Railway Company.

Hearings were held October 16th and November 6th.

\* [The approval of the Commission should be denied to an agreement intended to exist on paper only between one street railroad company and another street railroad company organized by the former and controlled by it.

Application of Frederick W. Whitridge, receiver of the Third Avenue Railroad Company, for approval of joint traffic agreement with Kingsbridge Railway Company denied.]

OPINION OF COMMISSION.

(Adopted December 8, 1908.)

COMMISSIONER EUSTIS:

This is an application made by the receiver in behalf of the Third Avenue Railroad Company for the approval of a certain agreement entered into between the receiver and the Kingsbridge Railway Company, dated the 29th of February, 1908.

The agreement provides for the use of the tracks of the Kingsbridge Railway Company by the receiver of the Third Avenue Railroad Company on condition that said receiver pays all taxes against the Kingsbridge Railway<sup>\*</sup> Company, maintains the tracks in good condition, and pays the Kingsbridge Company \$5,000 per annum, and reserves to the Kingsbridge Company the right to run a limited number of cars, not to exceed four daily, and that transfers shall be given and received between the contracting companies.

The facts that were brought out upon the hearings held on this application on October 16th and November 6th show that the Kingsbridge Railway was incorporated January 25, 1898, with an authorized capital of \$1,000,000. Of this amount eighty-six shares were subscribed, and \$8,600 dollars paid into the treasury of the company. The exclusive right to subscribe for the remaining 9,914 shares was given to the Third Avenue Railroad Company, showing that the Kingsbridge Railroad Company was organized by the interests of the old Third Avenue Railroad Company. The right to subscribe or take the balance of the stock has never been exercised.

The franchise of this company was granted by the municipal assembly, approved by the mayor in January, 1900. This franchise covered that part of the Kingsbridge road from One Hundred and Sixty-third street and Amsterdam avenue to Broadway, and that part of Broadway from Manhattan street north to Two Hundred and Thirtieth street in the Bronx, across the Harlem ship canal bridge. The franchise also covered a route in the Bronx from West Two Hundred and Thirtieth street and Riverdale avenue northerly to the Yonkers city line. The only part of the railroad that has been built is from Amsterdam avenue at One Hundred and Sixty-third street, along Kingsbridge road to Broadway and One Hundred and Sixty-ninth street, and up Broadway to and across the bridge over the Harlem ship canal to Two Hundred and Twenty-fifth street. The Kingsbridge Railway Company never owned anything except its franchise and its tracks. The only parties interested in it are the receiver and the Third Avenue Railroad Company's interests. And it appears that when this road was built, it was built by the Third Avenue Railroad Company in order to reach its large car barn and power house at Two Hundred and Eighteenth street. The reason for building it under the name of a different corporation was given that this stretch of road had to be built under a limited franchise of twenty-five years, and its own franchise was perpetual, and they said, "we did not want to mix up corporations with permanent rights with those which only had temporary rights, and that the Kingsbridge Railway Company owned nothing except the franchise and track and \$1.15, I think."

The Third Avenue Railroad Company leased its property, including the Kingsbridge road, to the Metropolitan Street Railway Company, which, in turn, leased it to the New York City Railway Company. After this property had gone into the hands of the receivers the Third Avenue system, including the Kingsbridge

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\* See footnote, page 9.

road, was separated from the other New York City Railway property and came into the hands of Mr. Whitridge, as its receiver.

All of the property of the Third Avenue Railroad system, including the Kingsbridge road, was mortgaged to the Morton Trust Company, which was succeeded by the Central Trust Company, which holds 86 shares of stock of the Kingsbridge company, together with the right to subscribe for the remaining 9,914 shares, and the Kingsbridge Railway Company's note given to the Third Avenue Railroad Company for the money expended in its construction.

The Kingsbridge Railway Company rendered annual reports to the Board of Railway Commissioners from and including 1902 down to and including 1907. In the report of 1902 it appears that the cost of the construction of the Kingsbridge road, 3.129 miles of double track, was \$877,474.99, making the cost per mile of double track \$280,792.

In the report of 1903 there appears this additional item: "Amount expended for construction of road by Third Avenue Railroad Company not heretofore put on the books of this company \$1,285,737.07," making the total cost of constructing the road \$2,226,362.23.

In reference to this last item of additional cost for the construction of the road, the auditor of the Interurban Street Railway Company stated on December 9, 1903, in a letter to the Board of Railroad Commissioners, as follows: "in reference to the amount, \$1,285,737.07, we regret to say that we cannot separate this item as to details, nor could we say that the road was built by contract, this amount being charged as one item on the old Third Avenue Railroad Company's books turned over to this company at the time of the lease."

In the reports of 1904 and 1905 this item appears under the description of "Reconstruction of the old road"; and in the report of 1906 it appears as "Construction of old road." The attention of the New York City Railway Company having been called to this discrepancy, it wrote to the Railroad Commissioners that it might be corrected to read "Reconstruction of old road."

The evidence produced by Mr. Robinson on behalf of the receiver was that there never was any old road to reconstruct.

In the report of 1907, the road having been extended in the meantime to Two Hundred and Twenty-fifth street, the total cost of the road is given at \$2,262,358.43, making the cost per mile of double track road \$871,721.62.

It appears also that the receiver is unable to give any facts or details as to the item of \$1,285,737.07 charged for reconstruction of old road by the Third Avenue Railroad Company, the witness stating that the books of the Third Avenue Railroad Company prior to 1900 could not be found.

It thus appears that the Kingsbridge Railway Company is a paper company, which, for the reasons stated, was organized in the interests of the Third Avenue Railroad Company; that it has a capital issued of \$8,600; and an unfunded debt of nearly two and a half millions, alleged to have been incurred for its construction, but representing a sum far in excess of the fair cost of such construction.

The approval of the Commission is asked for a joint traffic agreement between this company and the company that holds all of its unfunded obligations.

It also appears from examination made that the road is being operated by the receiver of the Third Avenue Railroad Company, as a part and parcel of the general system. Notwithstanding the agreement which has been in existence since February last requiring the receiver to pay to the Kingsbridge Railway Company \$5,000 per annum, payable quarterly, no payment whatever has been made, and it is conceded by the receiver that the reservations in the agreement for the Kingsbridge company to operate cars of its own not to exceed four daily, the payment of the above mentioned \$5,000 by the Third Avenue Railroad Company, the issue of transfer tickets from one company to the other, to furnish electrical power to operate the said cars by the receiver, to house the cars of the Kingsbridge company, clean and repair the same, and that the Kingsbridge company's employees shall not impede the progress of the cars of the Third Avenue Railroad Company, are each and all paper statements only, as it is not contemplated that the Kingsbridge Railway Company shall have any employees, shall own or operate any cars, or shall receive any payments from the Third Avenue Railroad Company.

It also appeared from the evidence that, notwithstanding the receiver was

operating the cars along the tracks of the Kingsbridge Railway Company on Broadway, transfers on that line were issued in the name of the Kingsbridge Railway Company. This procedure would tend to convey the idea to the patrons of the road that the line was being operated by the Kingsbridge Railway Company. And the provisions in the agreement submitted also allowing joint operation over this line by the Kingsbridge Company and the Third Avenue Company, under the reservation in the agreement, would tend to inconvenience the public in that it would be difficult to distinguish which company was liable for any damages that might be caused by the cars operated thereon.

In view of the fact that the receiver of the Third Avenue Company has admitted that it is not the intention that any cars will be operated by the Kingsbridge company under the reservation contained in the agreement, I think before this Commission approves the agreement the parts thereof that are not intended to be operative should be eliminated.

I would therefore recommend that the present agreement be not approved.

Thereupon the following final order was issued:

CASE 780, FINAL ORDER.

December 8, 1908.

An application, dated October 12, 1908, under section 54 of the Public Service Commissioners Law, having been made by the Third Avenue Railroad Company and Frederick W. Whitridge, as its receiver, to the Public Service Commission for the First District for the approval of an agreement entered into on February 29, 1908, between said receiver and the Kingsbridge Railway Company, and an order having been duly made by the Commission, being Hearing Order No. 780, that a hearing be had at the hearing room of the Commission, No. 154 Nassau street, New York city, Borough of Manhattan, on October 16, 1908, and said hearing having been duly had on that day and also on November 6, 1908, before Mr. Commissioner Bustis, Mr. Henry A. Robinson, of counsel for the Kingsbridge Railway Company and for said Frederick W. Whitridge, as said receiver, appearing in behalf of said application, and Mr. Henry H. Whitman, assistant counsel for the Public Service Commission for the First District, attending, it is

*Ordered*, That said agreement entered into on February 29, 1908, between Frederick W. Whitridge, as receiver of the Third Avenue Railroad Company, and the Kingsbridge Railway Company, be and the same hereby is not approved.

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ORDERS FOLLOWING OTHER APPLICATIONS BY COMPANIES.

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**Brooklyn Union Elevated Railroad Company.**—Discontinuance of elevated stations on the Fulton street line at Court and Fulton streets, and at Boerum place and Fulton street.

Hearing Order No. 201.  
Final Order No. 224.

In the Matter  
of the

Application of the BROOKLYN UNION ELEVATED RAILROAD COMPANY for authority to discontinue elevated stations on Fulton Street line at Boerum Place and Court Street.

ORDER NO. 201.  
January 14, 1908.

*Resolved*, That the application of the Brooklyn Union Elevated Railroad Company for authority to discontinue two elevated stations on the Fulton Street line, to wit, Court Street Station, at the junction of Court and Fulton streets, and Boerum Place Station, at the junction of Boerum Place and Fulton street, bearing date January 11, 1908, be heard by and before the Public Service Commission for the First District on the 16th day of January, 1908, at three o'clock in the afternoon, and that the said company publish a notice of the time and place of such hearing in the following newspapers, published in

Brooklyn, at least two days in succession before such hearing and file proof of such publication with the Secretary of this Commission on or before the opening of the hearing: Brooklyn Eagle, Brooklyn Times, Brooklyn Standard Union, Brooklyn Citizen.

Hearing held January 16th.

The following final order was issued:

**ORDER No. 224.**

January 28, 1908.

This application by the Brooklyn Union Elevated Railroad Company, under section 34 of the Railroad Law, filed with this Commission January 11, 1908, asking the consent of the Commission to the discontinuance of two (2) elevated stations on the Fulton Street line of said company, to wit:

Court Street Station, at the junction of Court and Fulton streets and Boerum Place Station, at the junction of Boerum Place and Fulton street; the same to depend upon the procurement from the city authorities of the right to construct a station about midway between the two above named, which will both as to capacity and location much better serve the requirements of traffic at that point and especially facilitate the transfer of passengers between elevated and subway lines at the City Hall Station, came on January 16, 1908, at three o'clock in the afternoon, Commissioners McCarroll and Bassett presiding, pursuant to an order and resolution of the Commission adopted on the 13th day of January, 1908, the same being Order No. 201, which appointed the 16th day of January, 1908, at three o'clock in the afternoon, as the time and place of hearing the said application and further directed that the said company publish a notice of the time and place of such hearing in newspapers published in Brooklyn specified therein, to wit: The Brooklyn Eagle, Brooklyn Times, Brooklyn Standard Union and Brooklyn Citizen, at least two (2) days in succession before such hearing and file proof of such publication with the Secretary of the Commission on or before the opening of the hearing.

The Brooklyn Union Elevated Railroad Company, at the opening of said hearing, duly filed proof of the publication of such notice in the papers aforesaid, in accordance with said order for hearing, and the following appearances were noted: Mr. George D. Yeomans and Mr. C. L. Woody of Counsel for the Brooklyn Union Elevated Railroad Company, Oliver C. Semple, Esq., Assistant Counsel for the Commission, William D. Veeder, Esq., Counsel, and Julius C. Nehrenkrauss, Treasurer for the Germania Savings Bank, after hearing the evidence and arguments, it appearing to the satisfaction of the Commission that the proposed discontinuance of the said stations by the Brooklyn Union Elevated Railroad Company is dependent upon an intention of the said company to construct a new station on Fulton street at or near the Borough Hall, and that the latter will better serve the convenience of the public in respect to transportation of passengers and a closer connection with the Brooklyn City Hall Station of the Interborough Rapid Transit Company, in the operation of its subway between the Borough of Brooklyn and the Borough of Manhattan,

Now therefore, the application of the Brooklyn Union Elevated Railroad Company is hereby granted and the Public Service Commission for the First District hereby consents, under section 34 of the Railroad Law, to the discontinuance of the stations of the said company on the Fulton Street line, described as follows, namely:

Court Street Station, at the junction of Court and Fulton streets;

Boerum Place Station, at the junction of Boerum Place and Fulton street. This consent to become effective, however, only if and when the new station at or near the Borough Hall on Fulton street, mentioned in said application filed by the said company upon the hearing herein, shall have been completed, with accommodations approved by the Commission, and opened for use of passengers for and upon the said road of said Brooklyn Union Elevated Railroad Company.

**Hudson and Manhattan Railroad Company.—Application for approval of terminal station under Sixth avenue near West Thirty-third street.**

In the Matter  
of the

Application of the HUDDSON AND MANHATTAN RAILROAD COMPANY for the approval of terminal station under Sixth avenue near West Thirty-third street.

} ORDER No. 768.  
October 7, 1908.

Whereas, the Hudson and Manhattan Railroad Company, in accordance with the certificate, dated February 22, 1905, granted to the New York & New Jersey Railroad

Company by the Board of Rapid Transit Railroad Commissioners for the city of New York, which certificate has since been amended by certain certificates dated April 12, 1908, and February 28, 1907, respectively, has made application for the approval of a terminal station under Sixth avenue, and at or near West Thirty-third street, in the borough of Manhattan, in accordance with the plan hereinafter referred to, which plan is in substitution of a plan approved by the said Board of Rapid Transit Railroad Commissioners on the 22d day of May, 1906;

Now, therefore, be it

*Resolved*, That the plan, dated September 9, 1908, revised October 2, 1908, entitled "Hudson & Manhattan R. R. Co. 33rd Street Terminal, Serial No. 3200-A", be, and the same hereby is approved, but only upon the following conditions, and this approval shall not be deemed to take effect unless and until the said railroad company shall accept the provisions hereof in writing, with the consent of the surety upon its bond in proper form duly attached thereto. The conditions upon which the said plan is approved are as follows:

1. If at any time hereafter the Commission or any board or official acting for the city of New York or otherwise shall construct or cause to be constructed a rapid transit railroad under Broadway, in the borough of Manhattan, with a station in Broadway, at or near West Thirty-third street, the wall together with the stairway connected therewith, all of which are indicated on the plan hereby approved in green and marked "Stairway No. 3 and Curtain Wall", may be removed so that a continuous connection may be made between the platform of the terminal station hereby approved and the platform of such rapid transit railroad station in Broadway; but such stairway, if and when removed, shall be located at some other point and shall be used jointly by the Hudson and Manhattan Railroad Company or its assigns and the city or its assigns.

2. If at any time hereafter it is desired by the city of New York to use the portion of West Thirty-third street, at or near the intersection of Sixth avenue, for a rapid transit railroad, portion of the railroad of the Hudson and Manhattan Railroad Company, extending under Sixth avenue, north of the south building line of West Thirty-third street, and the passage under West Thirty-third street, all of which are indicated in red on the said plan hereby approved, and entitled "Station Platform & Passageway to Stairways Nos. 1 & 2," together with the stairways indicated on the plan hereby approved in yellow and marked "Stairway No. 1" and "Stairway No. 2" may be removed.

3. If at any time in the future, and irrespective of the use of the said Thirty-third street for other rapid transit purposes, the stairways indicated in yellow on the plan hereby approved and marked "Stairway No. 1" and "Stairway No. 2" shall in the judgment of the Commission constitute an interference with traffic at those points the Commission may order them removed, and in that case the Hudson and Manhattan Railroad Company or its successors or assigns will promptly remove them and restore the street to its original condition at its own expense.

4. Any and all such removals except the removals provided for in the paragraph hereof designated "3" shall be made by and at the expense of the city, but the Hudson and Manhattan Railroad Company, its successors or assigns, shall be entitled to no compensation for the parts so removed, and the rental payable by it to the city shall not be affected except in case where the exit upon the surface of the street is removed, and in that case the annual rental payable for such exit shall cease.

5. If at any time hereafter the said "Stairway No. 5 and Curtain Wall" shall be removed and another stairway erected to be used in common for the purposes of the Hudson and Manhattan Railroad Company, or its successors and assigns, and a railroad constructed by or under the auspices of the city, the Hudson and Manhattan Railroad Company, its successors or assigns, shall pay for it the same rental as for the exit that may be removed.

6. For the exits upon the surface of the street as shown upon the plans hereby approved, being three in number, the Hudson and Manhattan Railroad Company, its successors or assigns, shall pay to the city of New York the sum or rental of five hundred dollars (\$500) per annum for each exit, subject to readjustment at the time and in the manner specified in the said certificate of February 22, 1905, as amended.

7. The term "rapid transit railroad" as used herein shall be deemed to include any method of underground transportation.

8. The said terminal shall be constructed upon the lines and grades as shown in the blue-print, dated September 3, 1908, entitled "Hudson & Manhattan Railroad Company, New York & New Jersey Railroad, Sixth Avenue, Plan and Profile 22nd Street to 33rd Street, Serial No. 3200."

**Interborough Rapid Transit Company.—Application for permission to make changes in signal system.**

Final Order No. 343.  
Final Order No. 343a.

In the Matter  
of the  
Application of the INTERBOROUGH RAPID  
TRANSIT COMPANY for permission to make  
changes in signal system.

ORDER No. 343.  
March 13, 1908.

Whereas application has been made by the Interborough Rapid Transit Company for permission to make certain changes in the signal system at, or near, the express stations on the express tracks in the subway, as shown on certain drawings marked "D-277" and "D-285" submitted by said company; and

Whereas said plans have been examined by the engineers of the Commission and approved by them with certain modifications, set forth in a certain report, dated January 18, 1908, entitled "The Subway Signal System," made by Bion J. Arnold, one of said engineers;

*Now therefore be it resolved*, That the said application of said Interborough Rapid Transit Company be and the same hereby is granted, and said company is hereby authorized to make said changes in said signal system, provided that the same be modified to conform to the recommendations made by said Arnold in said report, and provided further that the said company will proceed forthwith, to the best of its ability, to develop and put into experimental operation, subject to inspection at all times of the engineers of the Commission, a speed control signal system, intended to accomplish the results set forth and described in said report of said Arnold, as given in recommendations 1 and 2 thereof.

ORDER No. 343A.

April 10, 1908.

Whereas application was heretofore made by the Interborough Rapid Transit Company for permission to make certain changes in the signal system at or near the express stations on the express tracks in the subway, as shown on certain drawings marked "D-277," "D-285," submitted by said company; and

Whereas said plans were examined by the engineers of the Commission and approved by them with certain modifications set forth in a certain report dated January 18, 1908, entitled "The Subway Signal System," made by Bion J. Arnold, one of said engineers; and

Whereas thereafter on the 13th day of March, 1908, a resolution known as Order No. 343 was duly adopted by the Commission granting the said application and authorizing said changes as therein provided; and

Whereas said company desires to have such a resolution modified or amended, as hereinafter provided, in order that the terms thereof may be made more definite and certain, and the said Bion J. Arnold approves of such modification or amendment, now therefore it is

*Resolved*, That said resolution of the 13th day of March, 1908, known as Order No. 343, be and the same hereby is modified or amended so as to read as follows:

"*Resolved*, That the said application of the Interborough Rapid Transit Company be and the same hereby is, approved and granted as follows: that said company is hereby authorized to make said changes in said signal system on express tracks Nos. 1 and 3 at Ninety-sixth street, and Nos. 2 and 3 at Seventy-second street, Grand Central, Fourteenth street, and Brooklyn Bridge, in the manner shown on Interborough Rapid Transit Company's drawing D-285, marked Grand Central Station, and shown as Figure 2 in the report of said Arnold; and it is further

*Resolved*, That said company proceed forthwith, to the best of its ability, to develop and put into experimental operation, subject at all times to the inspection of the engineers of the Commission, an automatic speed control signal device, intended to accomplish the results set forth in recommendation No. 1 of the report of said Arnold as fully described in said report."

**Interborough Rapid Transit Company.—Application for authority to extend operation of the subway from Borough hall to the Flatbush avenue station, Brooklyn.**

In the Matter  
of the

Application of the INTERBOROUGH RAPID TRANSIT COMPANY for authority to extend the operation of the Brooklyn-Manhattan Subway to Flatbush Avenue. } ORDER No. 444.  
April 28, 1908.

Whereas from time to time portions of the Brooklyn-Manhattan Rapid Transit Railroad, being the rapid transit railroad constructed under contract of July 21, 1902, as modified, between the city of New York and Rapid Transit Subway Construction Company, have been opened for operation, and

Whereas the road is now being operated from its terminus at or near the post office in the borough of Manhattan to the Borough Hall station in the borough of Brooklyn, and

Whereas the Interborough Rapid Transit Company, to which has been assigned the operating part of such contract, has requested that it be authorized and permitted to place the section of said railroad from Borough Hall station to the terminus of the road at the Flatbush avenue station of the Long Island railroad in operation on the 1st day of May, 1908, at 12:50 o'clock A. M., and

Whereas the road will then be operated from its terminus in the borough of Manhattan to its terminus in the borough of Brooklyn, now therefore be it

*Resolved*, That the Interborough Rapid Transit Company be and it hereby is authorized to operate the portion of such road not at present operated from the Borough Hall station to the Flatbush avenue station of the Long Island railroad, and since passengers will then be carried along the entire length of said railroad, it is further

*Resolved and declared*, That the entire railroad, constructed as aforesaid under the said contract of July 21, 1902, is ready for operation, from May 1, 1908, at 12:50 o'clock A. M.

**Interborough Rapid Transit Company.—Application for authority to construct an additional platform at Bowling Green station preparatory to establishing a shuttle service between Bowling Green and South Ferry.**

Hearing Order No. 557.  
Resolution.

In the Matter  
of the

Application of the INTERBOROUGH RAPID TRANSIT COMPANY for authority to construct an additional platform on the west side of the Bowling Green Station preparatory to the establishment of a shuttle service between Bowling Green and South Ferry. }

HEARING ORDER No. 557.  
June 5, 1908.

*Resolved*, That a public hearing be had in the hearing room of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, at 4 o'clock P. M., Friday, June 12, 1908, in order to furnish all parties interested an opportunity to be heard in the matter of the application of the Interborough Rapid Transit Company for authority to construct an additional platform on the west side of the Bowling Green station preparatory to the establishment of a shuttle service between Bowling Green and South Ferry.

Hearing held June 12th.

The following resolution was adopted June 16, 1908:

*Resolved*, That the Commission hereby approves the form of contract submitted, amending the contract of July 21, 1902, between the City of New York and Rapid Transit Subway Construction Company, in order to provide for changes in the tunnel structure between the Bowling Green station and South Ferry station, to admit of the installation of a shuttle system between those stations.

**Interborough Rapid Transit Company.**—Application for permission to discontinue express service on the third track of the subway between Ninety-sixth and One Hundred and Thirty-seventh streets on Saturday afternoons.

In the Matter  
of the

Discontinuance of express service on the third track  
of the subway between Ninety-sixth and One Hun-  
dred and Thirty-seventh streets on Saturday after-  
noons.

ORDER No. 639.

July 17, 1908.

Whereas, the Board of Rapid Transit Railroad Commissioners, on November 15, 1906, adopted the following resolution:

"Resolved, That the Interborough Rapid Transit Company be, and it is hereby  
"Ordered, To immediately commence the operation of express trains on the third track  
between Ninety-sixth street and One Hundred and Thirty-seventh street dur-  
ing the rush hours morning and evening," and

Whereas, the Interborough Rapid Transit Company has made application in  
writing to this Commission, under date of July 3, 1908, for permission to discon-  
tinue the operation of express trains on said third track on Saturday afternoons;

Now upon motion made and duly seconded, it is

*Resolved*, That permission be and hereby is granted to the Interborough Rapid  
Transit Company to discontinue the operation of express trains on the third track  
of the subway between Ninety-sixth street and One Hundred and Thirty-seventh  
street on Saturday afternoons.

**Interborough Rapid Transit Company.**—Application for au-  
thority to operate in subway from Two Hundred and Thir-  
tieth to Two Hundred and Fortieth streets.

In the Matter  
of the

Application of the INTERBOROUGH RAPID  
TRANSIT COMPANY to operate the subway be-  
tween Two Hundred and Thirtieth street and Two  
Hundred and Forty-second street, on Broadway, begin-  
ning August 1, 1908.

ORDER No. 650.

August 3, 1908.

Whereas, from time to time portions of the Manhattan-Bronx Rapid Transit rail-  
road, being the Rapid Transit railroad constructed under the contract of February  
21, 1900, as modified, between the city of New York and John B. McDonald, have  
been opened for operation; and

Whereas, the Interborough Rapid Transit Company, to which has been assigned  
the operating part of such contract, has requested that it be authorized to place  
the portion of said railroad between Two Hundred and Thirtieth street and Broad-  
way and Two Hundred and Forty-second street and Broadway in operation on the  
1st day of August, 1908, at 1 o'clock A. M.;

*Resolved*, That the Interborough Rapid Transit Company be, and it hereby is  
authorized to operate the portion of such road which lies between Two Hundred  
and Thirtieth street and Broadway and Two Hundred and Forty-second street and  
Broadway, from August 1, 1908, at 1 o'clock A. M.

**Interborough Rapid Transit Company.**—Application for permission to maintain a temporary spur connection between its main power house and the tracks of the New York Central and Hudson River Railroad Company.

In the Matter  
of the

Application of INTERBOROUGH RAPID TRANSIT COMPANY for the Right to Maintain a Temporary Spur Connection between its Main Power House and the Tracks of New York Central and Hudson River Railroad Company, at or near West Fifty-ninth Street and Eleventh Avenue, in the Borough of Manhattan, City of New York.

CASE No. 1011.

PERMIT.

December 8, 1908.

Application having been duly made to the Public Service Commission for the First District by Interborough Rapid Transit Company under the contract dated February 21, 1900, as amended for the construction and operation of the Manhattan-Bronx Rapid Transit Railroad and the contract dated July 21, 1902, as amended for the construction and operation of the Brooklyn-Manhattan Rapid Transit Railroad for permission to install and maintain a temporary spur track or connection between its main power house at West Fifty-ninth street and the tracks of the New York Central and Hudson River Railroad Company on Eleventh avenue for the purpose of transporting certain heavy machinery to be installed in the said power house and to be used in the operation of the said rapid transit railroads;

Now, in consideration of the premises and pursuant to the provisions of the Rapid Transit Act, being chapter 4 of the Laws of 1891, as amended, and pursuant also to the provisions of said contracts, the Public Service Commission for the First District hereby grants to the said Interborough Rapid Transit Company permission to install and temporarily maintain a single spur track connection for the purposes above mentioned as indicated on the blue print hereto annexed, numbered 8549, dated November 18, 1908, and entitled "Interborough Rapid Transit Company. Sketch Showing Tracks in Place and Proposed at 58th & 59th Streets, 11th Avenue, Adjacent to Power House."

I. The permission hereby granted to install and maintain the said spur shall expire at midnight on April 15, 1909, unless sooner revoked by the Public Service Commission for the First District, and the Interborough Rapid Transit Company shall immediately upon the expiration of such time limit, or upon the revocation of this permit, remove the said spur and restore the street to as good a condition as now existing.

II. The Interborough Rapid Transit Company shall operate cars over the said track at such times and in such manner as to cause the least possible inconvenience to the public and will compensate all persons for any injuries to person or property that may be caused by such installation or operation.

III. In the event that the right of the Interborough Rapid Transit Company to maintain the said spur shall for any reason be challenged the said company shall at its own cost and expense maintain, in so far as it deems necessary, any right claimed by it hereunder.

IV. This permit shall not become effective unless and until the Interborough Rapid Transit Company shall file a bond in the sum of \$5,000 in form to be approved by Counsel to the Commission conditioned upon the faithful performance of the conditions hereinbefore recited.

The Interborough Rapid Transit Company by the acceptance of this permit accepts all the above terms and conditions, and will be bound by and agrees to every one of them.

In witness whereof, this permit has been authorized by a resolution of the Public Service Commission for the First District and is now attested by its seal and by the signature of its Chairman and Secretary this 8th day of December, 1908.

PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT,

Attest:

(Signed) Travis H. Whitney,  
Secretary.

(Signed) By WILLIAM R. WILLCOX,

Chairman.

Interborough Rapid Transit Company hereby accepts the foregoing permit on the terms and conditions therein stated.

Dated, New York, December , 1908.

INTERBOROUGH RAPID TRANSIT COMPANY,

By .....

Vice-President and General Manager.

**New York Connecting Railroad Company.**—Application for an extension of time within which to secure consent of adjoining property owners.

In the Matter  
of the

**Application of the NEW YORK CONNECTING RAILROAD COMPANY** for an extension of time under the certificate granted to it by the Board of Rapid Transit Railroad Commissioners for the city of New York, bearing date February 14, 1907.

ORDER No. 235.  
CERTIFICATE OF  
EXTENSION OF TIME.  
January 31, 1908.

Whereas, the Board of Rapid Transit Railroad Commissioners for the city of New York did, by certificate dated the 14th day of February, 1907, authorize the New York Connecting Railroad Company, a railroad corporation duly incorporated under the laws of the State of New York, to construct and operate a certain railroad in the city of New York; and

Whereas, the said certificate duly executed by the board aforesaid was delivered by the said Board to the said New York Connecting Railroad Company, which company on the 28th day of February, 1907, duly accepted the franchise and all the terms, conditions and requirements thereof by an instrument in writing; and

Whereas, by the terms, conditions and requirements of the said certificate it was provided, among other things, that the franchise thereby granted should, if the Board should so determine, become void unless within one year after the time of the acceptance of the certificate by the said company, that company should further and in due and lawful form obtain so far as might be necessary, if and when obtained file in the office of the said board the consent of the owners of one-half in value of the property bounded on the portions of streets over or under which the new railroad or any part of the route thereof should run, to the construction and operation of the new railroad or such part thereof, or in case such consent of such property owners could not where necessary be so obtained, then the determination of commissioners to be appointed pursuant to law by the Appellate Division of the Supreme Court in the First Department, or the Second Department, as the case might be, that such portion of the new railroad ought to be constructed and operated, the said determination of such commissioners, when confirmed by the Appellate Division which appointed such commissioners, to be taken in lieu of such consent of property owners; and

Whereas, the said New York Connecting Railroad Company has obtained the consent of the Board of Estimate and Apportionment and the mayor of the city, as required by said certificate, but has not obtained the consent of the requisite number of owners of property bounded on the portions of streets over or under which its new railroad or any part of the route thereof runs, and has shown reasonable cause why such consent has not been obtained and the period fixed for obtaining such consent has not now elapsed; and

Whereas, under and pursuant to the provisions of chapter 429 of the Laws of 1907, the said Board of Rapid Transit Railroad Commissioners was abolished and went out of office, and all the powers and duties of the said Board conferred and imposed by any statute of this State were directed to be exercised and performed by the Public Service Commission of the First District;

Now therefore, The Public Service Commission for the First District does hereby certify that the time of the New York Connecting Railroad Company to obtain and file consent of property owners, or in lieu thereof to obtain the determination of commissioners to be appointed pursuant to law by the Appellate Division of the Supreme Court in the First Department, or in the Second Department, as the case may be, and the confirmation of the said determination as required by the certificate or franchise of the Board of Rapid Transit Railroad Commissioners to the said railroad company, dated February 14, 1907, be and the same hereby is extended to the 28th day of February, 1910.

**New York City Interborough Railway Company.—Petition for approval of change of name.**

Final Order No. 606.  
Opinion of Counsel.

In the Matter  
of the  
Petition of the NEW YORK CITY INTERBOROUGH RAILWAY COMPANY for approval of proposed change of name to BRONX CROSSTOWN RAILWAY COMPANY.

ORDER No. 606.  
June 26, 1908.

Whereas, a petition of the New York City Interborough Railway Company, dated June 15, 1908, has been submitted to the Public Service Commission for the First District for approval pursuant to section 2411 of the Code of Civil Procedure; and

Whereas, said petition states that the New York City Interborough Railway Company desires to assume another name, namely, Bronx Crosstown Railway Company;

*Resolved*, That the Public Service Commission for the First District hereby approves the petition of the New York City Interborough Railway Company for change of name to Bronx Crosstown Railway Company.

*Further Resolved*, That a duly certified copy of this resolution be forwarded to the New York City Interborough Railway Company.

The New York City Interborough Railway Company applied for approval of proposed change of name to Bronx Crosstown Railway Company. The Commission made an order consenting to the change of name. A stockholder of the company asked that a rehearing be had and that the consent given be revoked upon the ground that such change of name would injure the credit of the company.

\*[The franchise of the company ought to be annulled for nonuse. Attorney-General requested to bring such action.]

After the Commission has given its consent to the change of name on the part of a railroad corporation, such consent cannot be revoked.]

The counsel to the commission rendered the following opinion that the commission had no power to revoke the consent given:

OPINION OF COUNSEL.

Name of corporation — change under Code of Civil Procedure, sections 2411, 2413 — approval of Commission as successor to Board of Railroad Commissioners, after being given, cannot be revoked or rehearing given.

July 9, 1908.

WILLIAM R. WILLCOX, Esq., Commissioner:

SIR.—In the matter of the petition of Robert C. Wood, asking for the cancellation of the consent and approval heretofore given by the Public Service Commission for the First District to the New York City Interborough Railway Company to change from its present name to Bronx Crosstown Railway Company, I beg to advise you as follows:

The Public Service Commission for the First District approved the application which was made to the Public Service Commission, as successor to the Board of Railroad Commissioners, pursuant to the provisions of section 2411 of the Code of Civil Procedure, which provides that the petition of a railroad company for leave to change its name must be approved in the case of railroad corporations by the Board of Railroad Commissioners. After such approval notice of the time and place where the petition will be presented to the court must, by section 2413 of the Code, be advertised for three weeks in two newspapers. If the court is satisfied that there is no reasonable objection, an order is made affecting the change of name.

In answer to an oral inquiry made, I orally advised you that the Commission having considered and approved the application for the change of name was *functus officio* and could not reconsider and rescind its action.

John G. Tomlinson, Esq., attorney for the petitioner, Robert C. Wood, has submitted a memorandum of authorities, in which he contends that the Commission has power to reconsider and withdraw its approval. After an examination of this memorandum of authorities and an examination of decisions of the courts of this State, I am convinced that the position which I took was correct and

\* See footnote, page 9.

## ORDERS OF THE COMMISSION ISSUED IN 1908. 199

that your Commission has no such power, and that section 2413 of the Code indicates that the proper time for the hearing of objections is when the petition is considered by the court.

The case on which Mr. Tomlinson relies is "In the Matter of United States Mortgage Company, 83 Hun, 572." In this case the banking department had consented to the change of name of a banking corporation and did grant a rehearing. There was, however, no decision by the court dealing with the power of the banking department to grant a rehearing or to reconsider its action, and as a matter of fact the banking department after granting the rehearing refused to rescind or change its former action.

On the other hand, it appears that the Court of Appeals has several times passed on the question involved in this application of Mr. Woods, and has held that the Board of Railroad Commissioners, having granted an application for a change of motive power by a street railroad corporation, had no power to rehear the matter in the absence of statutory authority conferring power to reconsider or review its action. This decision was rendered in People ex rel. Luckings v. Board of Railroad Commissioners, 30 App. Div. 69, and the decision was unanimously affirmed in the Court of Appeals on the opinion in the court below, and is reported in 156 N. Y. 693. A similar decision was rendered in People ex rel. Hotchkiss v. Board of Supervisors of the County of Broome, 65 N. Y., page 222.

My conclusion, therefore, is that the petitioner or any other person who has reason to oppose the proposed change of name, should make his objections in court when the application of the New York City Interborough Railway Company is heard, and that your Commission cannot withdraw, cancel or revoke the approval heretofore given to the change of name.

Respectfully yours,

(Signed)

GEO. S. COLEMAN,  
Counsel to the Commission.

The rehearing asked for was not granted.

## GRADE CROSSINGS.

**Long Island Railroad Company—Coney Island and Brooklyn Railroad Company.—Crossing at Atlantic and Franklin avenues.**

Hearing Order No. 692.  
Final Order No. 727.

In the Matter

of the

Hearing on motion of the Commission on the question of repairs or improvements to or changes in the tracks of the LONG ISLAND RAILROAD COMPANY and the CONEY ISLAND AND BROOKLYN RAILROAD COMPANY.

HEARING ORDER No. 692.  
August 25, 1908.

"Crossing at Atlantic Avenue and Franklin Avenue."

*It is hereby Ordered*, That a hearing be had on the 10th day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether repairs or improvements to or changes in the tracks or other property or devices used by the Long Island Railroad Company and the Coney Island and Brooklyn Railroad Company ought reasonably to be made in the particulars following, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for the transportation of passengers, freight, or property within the First District, namely:

Whether said Long Island Railroad Company and said Coney Island and Brooklyn Railroad Company should be directed to take up and remove the special track work forming the crossing of the Coney Island and Brooklyn Railroad Company double tracks on Franklin avenue by the double tracks of the Long Island railroad on Atlantic avenue, and to replace said special work by rails, so that there may be simply a double track of the Coney Island and Brooklyn Railroad Company crossing Atlantic avenue at Franklin avenue.

200 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

And if such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Long Island Railroad Company and the said Coney Island and Brooklyn Railroad Company be given at least ten days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said companies be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held September 10th and 15th.

The following final order was issued:

FINAL ORDER No. 727.

September 22, 1908.

This matter coming on upon the report of the hearing had herein on the 10th day of September, 1908, and the 15th day of September, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, No. 682, made August 25, 1908, and returnable on September 10, 1908, and that said order was duly served upon the Long Island Railroad Company and the Coney Island and Brooklyn Railroad Company, and that said service was by them duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 10th day of September, 1908, and by adjournment duly had on the 15th day of September, 1908, at each of which sessions Mr. Commissioner Bassett presided, Grosvenor H. Backus, Esq., assistant counsel to the Commission, attending, and D. B. Griffin, Esq., of counsel, and Charles L. Addison, Esq., assistant to the president, appearing for the Long Island Railroad Company, and E. D. Keily, Esq., appearing for the Coney Island and Brooklyn Railroad Company;

Now, it being made to appear after the proceeding on said hearing that repairs and improvements to and changes in the tracks and devices used by the Coney Island and Brooklyn Railroad Company ought reasonably to be made in the particulars following, in order to promote the security and convenience of the public, and in order to secure adequate facilities for the transportation of passengers within the First District;

Now, therefore, on motion duly made and seconded, it is

*Ordered*, That the Coney Island and Brooklyn Railroad Company be and it hereby is directed on or before the 10th day of October, 1908, to take up and remove the special track work forming the crossing of the Coney Island and Brooklyn Railroad Company double tracks on Franklin avenue, by the double tracks of the Long Island Railroad Company on Atlantic avenue, in the borough of Brooklyn, and to replace said special track work by straight rails along Franklin avenue, so that there may be simply a double track of the Coney Island and Brooklyn Railroad Company crossing Atlantic avenue at Franklin avenue; and it is further

*Ordered*, That this order shall take effect immediately and shall continue in force until modified by the further order of the Commission; and it is further

*Ordered*, That the Coney Island and Brooklyn Railroad Company notify the Public Service Commission for the First District within five days after service upon it of a certified copy of this order whether the terms of this order are accepted and will be obeyed.

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Long Island Railroad Company.—Opening of Chester street across tracks between Riverdale avenue and East Ninety-eighth street in the borough of Brooklyn.

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In the Matter  
of the

Application of the Board of Estimate and Apportionment of the City of New York relative to opening across the tracks of the Manhattan Beach Branch of the Long Island Railroad Company the following street:

Chester Street,  
Between Riverdale avenue and East 98th street in  
the borough of Brooklyn, city of New York.

HEARING ORDER No. 430  
WITH NOTICE.  
April 24, 1908.

An application having been made by the city of New York under section 61 of the Railroad Law to this Commission to determine whether a certain proposed

## ORDERS OF THE COMMISSION ISSUED IN 1908.

201

new street, namely, Chester street, between Riverdale avenue and East Ninety-eighth street, in the borough of Brooklyn, city of New York, shall pass over or under or at grade of the tracks of the Manhattan Beach branch of the Long Island Railroad Company, and application having been made to the Public Service Commission for the First District by the city of New York for an appointment of a time and place for a hearing in relation thereto;

*Resolved*, That a hearing be had on the said application in the hearing room in the office of the Public Service Commission for the First District at No. 154 Nassau street, borough of Manhattan, city of New York, at 2:30 o'clock in the afternoon on the 12th day of May, 1908, and it is

*Further resolved*, That notice of said hearing be given to all owners of land on the proposed extension of Chester street between Riverdale avenue and East Ninety-eighth street, borough of Brooklyn, city of New York, and to all owners of land adjoining the tracks of the Manhattan Beach branch of the Long Island Railroad Company at or near the point of intersection of the said proposed extension of Chester street with the said railroad by publishing daily in the City Record for two weeks prior to the date of hearing the notice set forth below, and that notice of the said hearing be served upon the Long Island Railroad Company by the service of a copy of said notice personally upon an officer of said railroad company at least ten (10) days in advance of the date set for said hearing; that notice of the said hearing be served upon the city of New York by service of a copy of the said notice upon the secretary of the Board of Estimate and Apportionment of the city of New York and upon the corporation counsel at least ten (10) days prior to the date set for the said hearing.

### NOTICE TO PROPERTY OWNERS.

Pursuant to section sixty-one (61) of the Railroad Law, the Public Service Commission for the First District hereby gives public notice to the city of New York, the Long Island Railroad Company and to all owners of land adjoining the said railroad at that part of Chester street, borough of Brooklyn, city of New York, to be opened or extended from *Riverdale avenue to East Ninety-eighth street* that the Public Service Commission for the First District will hold a public hearing in its hearing room on the third floor of the Tribune building, number 154 Nassau street, borough of Manhattan, city of New York, on May 12, 1908, at 2:30 o'clock in the afternoon, for the purpose of hearing an application made by the city of New York to the said Public Service Commission to determine whether the proposed extension of Chester street from Riverdale avenue to East Ninety-eighth street shall pass over or under or at grade of the tracks of the Long Island Railroad Company, and to determine the manner and method of extending Chester street across the said railroad tracks, the grade or grades of the street and such other matters pertaining thereto as may be brought before the Commission under the provisions of the Railroad Law.

Dated, April 24, 1908.

Hearings were held May 12th, June 16th, and November 5th; adjourned to February 4th, 1909.

**Long Island Electric Railway Company.—Construction of overhead crossing at Jamaica and Hempstead turnpike, borough of Queens.**

Hearing Order No. 449.  
Opinion of Commissioner Bassett  
Final Order No. 543.

In the Matter

of the

Hearing on the Motion of the Commission on the Question of Fixing a Date for the Completion by the LONG ISLAND ELECTRIC RAILWAY COMPANY of the Construction of the Overhead Crossing of the Tracks of the Long Island Railroad Company at the Jamaica and Hempstead Turnpike, Borough of Queens.

ORDER FOR HEARING  
No. 449.  
May 1, 1908.

Whereas, The Long Island Electric Railway Company on or about the 24th day of February, 1908, filed with the Board of Railroad Commissioners of the State

of New York under section 68 of the Railroad Law an application for a determination as to whether the applicant's railway should cross over or under or at grade of the tracks of the Long Island Railroad Company at the point where the Jamaica and Hempstead turnpike in the borough of Queens crosses the tracks of the said Long Island Railroad Company, and

Whereas, After a public hearing an agreement was entered into between the said Long Island Railroad Company and the said Long Island Electric Railway Company providing for a crossing at grade and further providing that on or before June 1, 1907, the Long Island Electric Railway Company should construct an overhead crossing of the steam railroad tracks, and

Whereas, the Board of Railroad Commissioners, on or about June 19, 1905, duly approved of the temporary grade crossing provided for in said agreement and specified certain details as to the manner of crossing, and

Whereas, The Long Island Railroad Company on or about March 18, 1907, filed a petition with the Board of Railroad Commissioners asking permission to continue the grade crossing for the further period of one year, and

Whereas, A hearing was held on this petition on or about March 22, 1907, after which the Board of Railroad Commissioners determined that the said grade crossing should continue for a further period of one year from June 1, 1907, to June 1, 1908, and

Whereas, The Long Island Electric Railway Company now petitions the Public Service Commission, as successors to the Board of Railroad Commissioners, for further permission to continue the temporary grade crossing for the period of one year from June 1, 1908, to June 1, 1909, now therefore it is

*Ordered*, That a hearing be had on the 15th day of May, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether permission should be granted to the Long Island Electric Railway Company to continue to cross the tracks of the Long Island Railroad Company on the Jamaica and Hempstead turnpike near Queens in the borough of Queens, city of New York, at grade in the manner now in use and to determine the period for which such permission should continue.

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That to the said Long Island Railroad Company and the said Long Island Electric Railway Company at least ten days' notice of such hearing be given by service upon each of them personally or by mail of a certified copy of this order and that at such hearing said companies be afforded all reasonable opportunity for examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held May 15th and 22d.

OPINION OF COMMISSION.

(Adopted May 29, 1908.)

COMMISSIONER BASSETT:—

In February, 1905, the Long Island Electric Railway Company, a street surface road, filed with the Board of Railroad Commissioners, under section 68 of the Railroad Law, an application for a determination whether their street surface railroad should cross over or under or at grade of the tracks of the Long Island Railroad Company at the Jamaica and Hempstead turnpike.

In June, 1905, the Board of Railroad Commissioners approved of a temporary grade crossing, but made no determination as to the ultimate separation of grades. At the end of the year permission was given by the same board for the continuation of the grade crossing to June 1, 1908.

The Long Island Electric Railway Company now asks for further permission to continue the grade crossing for one year, and on the hearing amended their application by asking an extension for two years. After examination of the papers and after testimony taken on the hearing, I am of the opinion that the proceeding before the Board of Railroad Commissioners was never finally determined, as no final provision was ever made for the grade of the new street railroad. That board did not say that until June 1, 1908, the tracks should cross at grade, and after that date should be elevated or depressed; but the final grade of the track was left undetermined and this application is, by consent of the applicant company, and the consent of the Long Island Railroad Company, whose track is to be crossed, to be considered a continuation of the old application.

From the testimony of our own inspectors and that of the engineers of the two railroad companies, it would seem that this crossing is most carefully protected, and I believe that until it is possible to separate the grade of the Jamaica and Hempstead turnpike from the grade of the Long Island railroad, or at least until traffic on that highway is much heavier than at present, the Long Island Electric Railway Company should be allowed to remain on the highway and cross at grade.

I, therefore, submit herewith an order reciting the continuation of the proceeding and granting, in the meanwhile, permission to the company to continue to cross at grade.

Thereupon the following final order was issued:

ORDER No. 543.

May 29, 1908.

This matter coming on upon the report of the hearing had herein on the 15th day of May, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission made May 1, 1908, and returnable on May 15, 1908, and that the said order was duly served upon the Long Island Electric Railway Company and upon the Long Island Railroad Company, and that the said service was by them duly acknowledged, and that said hearing was held by and before the Commission on the matters in said order specified on May 15, 1908, and by adjournment duly had on May 22, 1908, before Mr. Commissioner Bassett, presiding, Arthur DuBols, Esq., appearing for the Commission, VanVechten Veeder, Esq., appearing for the Long Island Electric Railway Company, and C. L. Addison, Esq., appearing for the Long Island Railroad Company, and proof having been taken.

Now it being made to appear after the proceedings upon said hearing that on or about the 24th day of February, 1905, the Long Island Electric Railway Company filed with the Board of Railroad Commissioners of the State of New York, under section 68 of the Railroad Law, an application for a determination as to whether the applicant's street surface railway should cross over or under or at grade of the tracks of the Long Island Railroad Company at the point where the Jamaica and Hempstead turnpike crosses the tracks of the Long Island Railroad Company in the borough of Queens, city of New York, and it appearing that after public hearing the said Board of Railroad Commissioners approved of a temporary grade crossing until June 1, 1907; and it further appearing that the Board of Railroad Commissioners on or about March 22, 1907, made a further determination that the said grade crossing should continue for a further period, namely, until June 1, 1908; and it further appearing that there is no good reason at the present time why the tracks of the Long Island Electric Railway Company should not continue to cross the tracks of the Long Island Railroad Company at grade temporarily,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
Ordered, That pending a final determination by this Commission as to the ultimate grade of the tracks of the Long Island Electric Railway Company at the grade crossing of the Jamaica and Hempstead turnpike with the Long Island railroad Company, and pending the separation of the grades of the Jamaica and Hempstead turnpike and the tracks of the Long Island Railroad Company, in the borough of Queens, but in no event for a period to exceed two years from the date of the making and filing of this order, permission is granted the Long Island Electric Railway Company to maintain its present crossing with the tracks of the Long Island Railroad Company at the Jamaica and Hempstead turnpike, borough of Queens, city of New York; and it is

Further Ordered, That this permission shall cease and determine upon the separation of the grades of the Jamaica and Hempstead turnpike and the Long Island Railroad Company, and that in the event of such separation of grades the tracks of the Long Island Electric Railway Company shall follow the grade of the Jamaica and Hempstead turnpike. It is

Further Ordered, That this permission shall cease and determine upon a final determination of the Public Service Commission for the First District in this proceeding after a hearing duly had, upon ten days' notice to the Long Island Electric Railway Company and to the Long Island Railroad Company on or before June 1, 1910. It is

Further Ordered, That this order shall take effect immediately and continue in force until June 1, 1910.

**Long Island Railroad Company — Brooklyn Union Elevated Railroad Company.** — Opening Avenue P across the tracks of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company between Ocean avenue and Gravesend avenue, Brooklyn.

In the Matter  
of the

Application of the BOARD OF ESTIMATE AND APPORTIONMENT OF THE CITY OF NEW YORK relative to opening across the tracks of the LONG ISLAND RAILROAD COMPANY and the BROOKLYN UNION ELEVATED RAILROAD COMPANY the following street:

HEARING ORDER No. 555.  
WITH NOTICE.  
June 5, 1908.

AVENUE P,

between Ocean avenue and Gravesend avenue, in the borough of Brooklyn, city of New York.

An application having been made by The City of New York, under section 61 of the Railroad Law, to this Commission to determine whether a certain proposed new street, namely, Avenue P, between Ocean avenue and Gravesend avenue, in the borough of Brooklyn, city of New York, shall pass over or under or at grade of the tracks of the Long Island Railroad Company and the tracks of the Brooklyn Union Elevated Railroad Company, and application having been made to the Public Service Commission for the First District by the city of New York for the appointment of a time and place for a hearing in relation thereto,

*Resolved*, That a hearing be had on the said application in the hearing room in the office of the Public Service Commission for the First District, at No. 154 Nassau street, borough of Manhattan, city of New York, at 2:30 o'clock in the afternoon, on the 9th day of July, 1908; and it is further

*Resolved*, That notice of said hearing be given to all owners of land on the proposed extension of Avenue P, between Ocean avenue and Gravesend avenue, borough of Brooklyn, city of New York, and to all owners of land adjoining the tracks of the Long Island Railroad Company and of the Brooklyn Union Elevated Railroad Company, at or near the point of intersection of the said proposed extension of Avenue P with the said railroads, by publishing daily in the City Record for two weeks prior to the date of hearing the notice set forth below: and that notice of the said hearing be served upon the Long Island Railroad Company and upon the Brooklyn Union Elevated Railroad Company by the service of a copy of the said notice personally upon an officer of each of the said railroad companies at least ten days in advance of the date set for said hearing; that notice of the said hearing be served upon the city of New York by service of a copy of said notice upon the secretary of the board of estimate and apportionment of the city of New York and upon the corporation counsel at least ten days prior to the date set for the said hearing.

NOTICE TO PROPERTY OWNERS.

Pursuant to section sixty-one (61) of the Railroad Law, the Public Service Commission for the First District hereby gives notice to the city of New York, to the Long Island Railroad Company, to the Brooklyn Union Elevated Railroad Company and to all owners of land adjoining the said railroad and that part of Avenue P, borough of Brooklyn, City of New York, to be opened or extended from Ocean avenue to Gravesend avenue, that the Public Service Commission for the First District will hold a public hearing in its hearing room on the third floor of the Tribune Building, No. 154 Nassau street, borough of Manhattan, city of New York, on July 9, 1908, at 2:30 o'clock in the afternoon, for the purpose of hearing an application made by the city of New York to the Public Service Commission to determine whether the proposed extension of Avenue P from Ocean avenue to Gravesend avenue shall pass over or under or at grade of the tracks of the Long Island Railroad Company and the tracks of the Brooklyn Union Elevated Railroad Company, and to determine the manner and method of extending Avenue P across the said railroad tracks, the grade or grades of the street and such other matters pertaining thereto as may be brought before the Commission under the provisions of the Railroad Law.

Hearing held July 9th.

**Application by the City of New York to acquire title to various streets in the boroughs of Queens and Brooklyn.**

Hearing Order No. 230.  
 Hearing Order No. 230a.  
 Hearing Order No. 230b.  
 Hearing Order No. 230c.  
 Hearing Order No. 230d.

**ORDER No. 230.**  
 January 31, 1908.

**Resolved**, That a hearing be given on February 20th, at 2 p. m., and that ten days' notice thereof be given to the proper persons and proper corporations in the following matters:

Application of the city of New York, relative to acquiring title to Cleveland avenue, between Thomson avenue and Skillman avenue; First street, between Thomson avenue and Jackson avenue; Second street, between Woodside avenue and Jackson avenue; and Third street between Thomson avenue and Jackson avenue, in the borough of Queens, the city of New York.

Application of the city of New York, relative to acquiring title to Grout avenue between Greenpoint avenue and Fisk avenue, Second ward, borough of Queens, city of New York.

Application of the city of New York, relative to acquiring title to Kelly avenue between Woodside avenue and Jackson avenue; Sixth street between Thomson avenue and Seventh street, and Seventh street, between Thomson avenue and Jackson avenue, Second ward, in the borough of Queens, city of New York.

Application of the city of New York, relative to acquiring title to Hegeman avenue, between East Ninety-eighth street and New Jersey avenue, in the borough of Brooklyn, city of New York.

In the Matter  
 of the

Application of THE CITY OF NEW YORK, relative to opening across the tracks of the North-side Division of the Long Island Railroad the following streets:

FIRST STREET

Between Thomson Avenue and Jackson Avenue,

SECOND STREET

Between Woodside Avenue and Jackson Avenue,

THIRD STREET

Between Thomson Avenue and Jackson Avenue,  
 in the Borough of Queens, The City of New York.

ORDER No. 230a.  
 NOTICE OF HEARING.  
 January 31, 1908.

An application having been made by the city of New York, under section 61 of the Railroad Law, to this Commission, to determine whether certain proposed new streets, namely, First street, between Thomson avenue and Jackson avenue; Second street, between Woodside avenue and Jackson avenue; and Third street, between Thomson avenue and Jackson avenue, all in the borough of Queens, city of New York, shall pass over or under or at grade of the tracks of the North-side Division of the Long Island Railroad Company, and application having been made to the Public Service Commission for the First District by The City of New York for the appointment of a time and place for a hearing in relation thereto.

**Resolved**, That a hearing be had in the Hearing Room, in the office of the Public Service Commission for the First District, at No. 154 Nassau street, borough of Manhattan, city of New York, at 2 p. m., February 20, 1908, and that at least ten days' notice of the said hearing be given to the proper persons, as required by law.

In the Matter  
of the

Application of THE CITY OF NEW YORK, relative to opening across the tracks of the Flushing and Northside Division of the Long Island Railroad, the following street:

ORDER No. 230b  
NOTICE OF HEARING.  
January 31, 1908.

GROUT AVENUE

Between Greenpoint Avenue and Fisk Avenue,  
Second Ward, Borough of Queens, City of New York.

An application having been made by the city of New York, under section 61 of the Railroad Law, to this Commission, to determine whether a certain proposed new street, namely, Grout avenue, between Greenpoint avenue and Fisk avenue, second ward, borough of Queens, city of New York, shall pass over or under or at grade of the tracks of the Flushing and Northside Division of the Long Island Railroad Company, and application having been made to the Public Service Commission for the First District by the city of New York for the appointment of a time and place for a hearing in relation thereto.

*Resolved*, That a hearing be had in the Hearing Room, in the office of the Public Service Commission for the First District, at No. 154 Nassau street, borough of Manhattan, city of New York, at 2 P. M., February 20, 1908, and that at least ten days' notice of the said hearing be given to the proper persons, as required by law.

In the Matter  
of the

Application of THE CITY OF NEW YORK, relative to opening across the tracks of the Northside Division of the Long Island Railroad, the following streets:

ORDER No. 230-c.  
Notice of Hearing.  
January 31, 1908.

SIXTH STREET

Between Thomson Avenue and Seventh Street,  
and

SEVENTH STREET

Between Thompson Avenue and Jackson Avenue,  
Second Ward, in the Borough of Queens, City  
of New York.

An application having been made by the city of New York, under section 61 of the Railroad Law, to this Commission, to determine whether certain proposed new streets, namely, Sixth street, between Thomson avenue and Seventh street, and Seventh street, between Thomson avenue and Jackson avenue, both in the borough of Queens, city of New York, shall pass over or under or at grade of the tracks of the Northside Division of the Long Island Railroad Company, and application having been made to the Public Service Commission for the First District by the city of New York for the appointment of a time and place for a hearing in relation thereto.

*Resolved*, That a hearing be had in the Hearing Room, in the office of the Public Service Commission for the First District, at No. 154 Nassau street, borough of Manhattan, city of New York, at 2 P. M., February 20, 1908, and that at least ten days' notice of the said hearing be given to the proper persons, as required by law.

In the Matter  
of the

**Application of THE CITY OF NEW YORK,** relative to opening across the tracks of the Manhattan Beach Branch of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company the following street:

ORDER No. 230-d.  
NOTICE OF HEARING.  
January 31, 1908.

**HEGEMAN AVENUE**

Between East Ninety-eighth Street and New Jersey Avenue, in the Borough of Brooklyn, city of New York.

An application having been made by the city of New York, under section 61 of the Railroad Law, to this Commission to determine whether a certain proposed new street, namely, Hegeman avenue, between East Ninety-eighth street and New Jersey avenue, in the borough of Brooklyn, city of New York, shall pass over or under or at grade of the tracks of the Manhattan Beach Branch of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company, and application having been made to the Public Service Commission for the First District by The City of New York for the appointment of a time and place for a hearing in relation thereto.

*Resolved*, That a hearing be had in the Hearing Room, in the office of the Public Service Commission for the First District, at No. 154 Nassau street, borough of Manhattan, city of New York, at 2 P. M., February 20, 1908, and that at least ten days' notice of the said hearing be given to the proper persons, as required by law.

**Long Island Railroad Company—Brooklyn Union Elevated Railroad Company.**—Application of the city of New York to open Hegeman avenue across tracks of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company.

Hearing Order No. 230 D 1.  
Opinion of Commissioner Bassett.  
Final Order No. 490.

In the Matter  
of the

**Application of THE CITY OF NEW YORK,** relative to opening across the tracks of the Manhattan Beach Branch of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company the following street:

HEARING ORDER,  
No. 230 D 1  
With Notice.  
March 24, 1908.

**HEGEMAN AVENUE**

Between East Ninety-eighth Street and New Jersey Avenue, in the Borough of Brooklyn, city of New York.

An application having been made by the city of New York, under section 61 of the Railroad Law, to this Commission, to determine whether a certain proposed new street, namely, Hegeman avenue, between East Ninety-eighth street and New Jersey avenue, in the borough of Brooklyn, city of New York, shall pass over or under or at grade of the tracks of the Manhattan Beach Branch of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company, and application having been made to the Public Service Commission for the First District by the city of New York for the appointment of a time and place for a hearing in relation thereto.

*Resolved*, That a hearing be had on the said application in the Hearing Room, in the office of the Public Service Commission for the First District, at No. 154

Nassau street, borough of Manhattan, city of New York at 2:30 o'clock in the afternoon on the 16th day of April, 1908; and it is further

*Resolved*, That notice of said hearing be given to all owners of land on the proposed extension of Hegeman avenue between East Ninety-eighth street and New Jersey avenue, borough of Brooklyn, city of New York, and to all owners of land adjoining the tracks of the Long Island Railroad Company and the tracks of the Brooklyn Union Elevated Railroad Company at or near the point of intersection of the said proposed extension of Hegeman avenue with the said railroads, by publishing daily in the City Record for two weeks prior to the date of hearing, the notice set forth below; that notice of the said hearing be served upon the Long Island Railroad Company and upon the Brooklyn Union Elevated Railroad Company by a service of a copy of said notice personally upon an officer of each of the said railroad companies, at least ten (10) days in advance of the date set for said hearing; that notice of the said hearing be served upon the city of New York by a service of a copy of the said notice upon the corporation counsel, at least ten (10) days prior to the date set for the said hearing.

#### NOTICE TO PROPERTY OWNERS.

Pursuant to section sixty-one (61) of the Railroad Law the Public Service Commission for the First District hereby gives public notice to the city of New York, the Long Island Railroad Company, the Brooklyn Union Elevated Railroad Company, and to all owners of land adjoining the said railroads and that part of

#### HEGEMAN AVENUE, BOROUGH OF BROOKLYN, CITY OF NEW YORK.

To be opened or extended from East 98th street to New Jersey avenue; that the Public Service Commission for the First District will hold a public hearing in its hearing room on the third floor of the Tribune Building, No. 154 Nassau street, borough of Manhattan, city of New York, on April 16, 1908, at 2:30 o'clock in the afternoon, for the purpose of hearing an application made by the city of New York to the said Public Service Commission to determine whether the proposed extension of Hegeman avenue from East 98th street to New Jersey avenue shall pass over or under or at grade of the tracks of the Long Island Railroad Company and of the Brooklyn Union Elevated Railroad Company, and to determine the manner and method of extending Hegeman avenue across the said railroad tracks, the grade or grades of the street and such other matters pertaining thereto as may be brought before the Commission under the provisions of the Railroad Law.

Dated, March 24, 1908.

Hearing held April 16th.

#### OPINION OF COMMISSION.

(Adopted May 12, 1908.)

#### COMMISSIONER BASSETT:—

A hearing was held before me on an application by the city of New York to the Commission, under section 61 of the Railroad Law, for determination whether the proposed extension of Hegeman avenue between East Ninety-eighth street and New Jersey avenue in the borough of Brooklyn should pass over or under or at a grade of the tracks of the Manhattan Beach Branch of the Long Island Railroad Company and the tracks of the Brooklyn Union Elevated Railroad Company, and for a determination of the manner and method of crossing and the grades thereof. The tracks of these two railroads at the point of their intersection with the proposed extension of Hegeman avenue are over 100 feet apart, and for this reason two determinations by this Commission are necessary, one as to each railroad.

At the hearing there appeared the two railroad companies, the city of New York, the Brooklyn Grade Crossing Commission and several property owners. All agreed that owing to the present grades of the railroads, Hegeman avenue must pass under the tracks of both railroads. It appeared also that the Brooklyn Grade Crossing Commission, by virtue of special legislation, had fixed the grade of the Long Island Railroad Company at this point. It was found also that the established grades of Hegeman avenue would carry that street beneath the tracks of the Long Island Railroad Company, leaving ample head-room, and I therefore recommend as to the Long Island Railroad that the grade of the tracks remain as fixed by the Brooklyn Grade Crossing Commission and that the grades of the approaches to the crossing under the tracks of the railroad be those already established as the official grade of Hegeman avenue. I recommend

also that the abutments of the bridge carrying the railroad over Hegeman avenue be the same width as the proposed extension of Hegeman avenue.

Nelson P. Lewis, Esq., Chief Engineer of the Board of Estimate and Apportionment, had prepared and kindly furnished to the Commission a summary statement of the grades which he believed should be adopted in order to carry Hegeman avenue beneath these two sets of tracks, and his suggestions, which appear to be in accord with the ideas of the representatives of the two railroad companies, have been embodied in the order which I submit herewith.

In respect to the Canarsie Branch of the Brooklyn Union Elevated Railroad Company, I believe that it is necessary to establish the grade of the street four feet below the grade heretofore legally established at this point, the grade or approaches to be uniform grades from the present legally established grade of Snediker avenue, the bridge carrying the railroad tracks over the street to be seventy feet in length, that being the full width of Hegeman avenue.

The determination recommended gives a clearance between the bottom of the bridge and the established grade of the street of 12.64 feet in the case of the Brooklyn Union Elevated Railroad company and of fourteen feet in the case of the Long Island Railroad Company.

Thereupon the following final order was issued:

FINAL ORDER No. 490.

May 12, 1908.

This matter coming on upon the report of the hearing had herein on April 16, 1908, and it appearing that an application had been made by the city of New York, under section 61 of the Railroad Law, to this Commission to determine whether a certain proposed new street, namely, Hegeman avenue, between East Ninety-eighth street and New Jersey avenue, in the borough of Brooklyn, city of New York, should pass over or under or at grade of the tracks of the Manhattan Beach Branch of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company, and this Commission having appointed a time and place for hearing said application, and due and reasonable notice of such hearing of more than ten days having been given to the Long Island Railroad Company and to the Brooklyn Union Elevated Railroad Company and to the city of New York and to the owners of land adjoining the railroad and that part of Hegeman avenue to be opened or extended; and it further appearing that the said hearing was held by and before this Commission on the matters specified in the order for hearing and in the notice to property owners, on April 16, 1908, and by adjournment duly had on April 23, 1908, before Mr. Commissioner Bassett, presiding, Arthur DuBois, Esq., assistant counsel, appearing for the Public Service Commission for the First District, James F. Quigley, Esq., and T. C. Blake, Esq., assistant corporation counsel, appearing for the city of New York; J. F. Keeney, Esq., general counsel, appearing for the Long Island Railroad Company; Charles Woody, Esq., counsel, appearing for the Brooklyn Union Elevated Railroad Company; E. C. Sweezey, counsel, appearing for the Brooklyn Grade Crossing Commission; Thomas E. Park, Esq., Henry Salant, Esq., and Robert Armet, Esq., appearing for various property owners:

Now, it being made to appear, after the proceedings upon said hearing, that Hegeman avenue is about to be constructed across the tracks of the Long Island Railroad Company and the tracks of the Brooklyn Union Elevated Railroad Company, and that notice of the intention to lay out said Hegeman avenue was duly given to the said railroad companies by the city of New York, as required by law, and that the said railroad companies were given an opportunity to be heard before the proper authorities of the city of New York upon the question of the necessity of the construction of Hegeman avenue, and that the city of New York duly determined that said Hegeman avenue was necessary;

Now, therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

Ordered, (1) As to the Long Island Railroad Company —

(a) When Hegeman avenue shall hereafter be constructed across the Manhattan Beach branch of the Long Island Railroad Company, it shall be constructed under said railroad.

(b) The grade of the street beneath the tracks shall be at an elevation of 15.8 feet above mean high tide, that being the legally established grade of Hegeman avenue.

(c) The elevation of top of rail of the railroad tracks to be 33.68 feet above mean high tide, this being the grade for the railroad as fixed by the Brooklyn Grade Crossing Commission in its plan for the Bay Ridge Improvement.

(d) The grades of the approaches to said crossing to be those already established as the official grade of Hegeman avenue.

(e) The clearance between the bottom of the bridge carrying the railroad tracks and the established grade of the street to be not less than 14 feet.

(f) The abutments carrying the bridge to be placed on the building line and to be 70 feet distant from each other, measured at right angles.

(g) When the span measured along the track does not exceed 70 feet, then there shall be no intermediate support, but when the span so measured exceeds 70 feet, supporting columns may be placed at the curb line.

(h) All elevations given above refer to the datum of the Bureau of Highways of the borough of Brooklyn.

(i) Before the construction of this bridge is commenced detailed plans and specifications approved by the chief engineer of the railroad company and by the chief engineer of the board of estimate and apportionment and an estimate of the expense of the proposed changes shall be submitted to the Public Service Commission for the First District, for their approval.

(2) As to the Canarsie branch of the Brooklyn Union Elevated Railroad Company —

(a) When Hegeman avenue shall hereafter be constructed across the Brooklyn Union elevated railroad, it shall be constructed below the grade of the railroad.

(b) The grade of the street beneath the tracks shall be at an elevation of 12.24 feet above mean high tide or 4 feet below the grade of the street heretofore legally established at this point.

(c) The elevation of the top of rail of the railroad tracks to be 27.8 feet above mean high tide.

(d) The grades of the approaches at Hegeman avenue to be uniform grades from the elevation above given at the crossing of the Long Island Railroad Company's tracks, namely, 15.8 feet, and from the present legally established grade of Snediker avenue, namely, 15 feet above mean high tide.

(e) The clearance between the bottom of the bridge carrying the railroad tracks and the established grade of the street shall not be less than 12.04 feet.

(f) The abutments carrying the bridge to be placed on the building line and to be 70 feet distant from each other, measured at right angles.

(g) When the span measured along the track does not exceed 70 feet, then there shall be no intermediate support, but when the span so measured exceeds 70 feet, supporting columns may be placed at the curb line.

(h) All elevations given above refer to the datum of the Bureau of Highways in the borough of Brooklyn.

(i) Before the construction of this bridge is commenced detailed plans and specifications approved by the chief engineer of the railroad company and by the chief engineer of the board of estimate and apportionment and an estimate of the expense of the proposed changes shall be submitted to the Public Service Commission for the First District, for their approval.

*Further Ordered*, That before May 17, 1908, the decision of this Commission, rendered in this proceeding, shall be communicated to all parties to whom notice of the hearing in this proceeding was given or who appeared at this hearing by counsel or in person.

### New York Central and Hudson River Railroad Company.—

Opening of West Two Hundred and Thirty-fourth street  
across the tracks of Putnam division.

In the Matter  
of the

Application of the CITY OF NEW YORK, relative  
to opening across the tracks of the New York  
and Putnam Division of the New York Central  
and Hudson River Railroad Company of

HEARING ORDER No. 278.  
February 21, 1908.

WEST 234TH STREET,  
in the Borough of the Bronx.

An application having been made by the City of New York, under section 61 of the Railroad Law, to this Commission, to determine whether a certain proposed new street, namely, West 234th street, in the borough of the Bronx, shall pass over or under or at grade of the tracks of the New York and Putnam Division of the New York Central and Hudson River Railroad Company, and application having been made to the Public Service Commission for the First District by the City of New York for the appointment of a time and place for a hearing in relation thereto.

*Resolved*, That a hearing be had in the hearing room, in the office of the Public Service Commission for the First District, at No. 154 Nassau street, borough of Manhattan, city of New York, at 2 P. M., March 5, 1908, and that at least ten days' notice of the said hearing be given to the proper persons, as required by law.

**New York Central and Hudson River Railroad Company.—**

Application for approval of extension of time for completion of depressing tracks and constructing viaducts and bridges.

ORDER No. 576.

June 18, 1908.

"Whereas, pursuant to the authority conferred by chapter 403 of the Laws of 1908, the Board of Estimate and Apportionment of the City of New York, by resolution adopted on the 5th day of June, 1908, extended the time for the completion of the work of depressing the tracks and constructing the viaducts or bridges provided for in chapter 425 of the Laws of 1908, as amended by chapter 639 of the Laws of 1904, and in the several agreements executed pursuant to the provisions of the said acts made by and between the City of New York, The New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company, from the first day of July, 1908, to the 31st day of December, 1909, such extension being evidenced by an instrument in writing by and between The City of New York, The New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company, dated the 5th day of June, 1908, which said instrument in writing has been duly submitted to this Commission for its approval; and

"Whereas, pursuant to the said chapter 403 of the Laws of 1908, such extension does not become effective until approved by this Commission;

"Now, therefore,

"Resolved, That such extension of time be and the same is hereby approved; and

"Resolved, That this approval be evidenced by endorsing upon or annexing to the said instrument in writing a copy of the foregoing resolution duly certified under the seal of the Commission by the Secretary of the Commission."

**Union Railway Company of New York City.—Application for approval of construction of street surface railway crossing New York Central and Hudson River Railroad, Putnam division tracks, at Two Hundred and Thirtieth street.**

In the Matter  
of the

Application of the UNION RAILWAY COMPANY  
OF NEW YORK CITY and FREDERICK W.  
WHITRIDGE, as Receiver, etc., of said Union  
Railway Company, for the approval of street  
surface railway construction on 230th Street,  
Borough of The Bronx, City of New York.

HEARING ORDER No. 770.  
October 7, 1908.

## Under Section 68 of the Railroad Law.

An application, dated October 6, 1908, having been made by the Union Railway Company of New York city and by Frederick W. Whitridge, as receiver of the Union Railway Company, under section 68 of the Railroad Law, to the Public Service Commission for the First District, asking the Commission to fix and determine the crossing of the applicant's street railroad tracks to be extended on 230th street, borough of The Bronx, between Broadway and Bailey avenue, with the tracks of the Putnam division of the New York Central and Hudson River Railroad Company (an existing steam railroad) and asking for a determination whether the tracks of the Union Railway Company (a street railroad corporation) shall pass above, below or at grade of the tracks of the Putnam Division of the New York Central and Hudson River Railroad Company.

*Ordered*, That a hearing be had in the hearing room, in the office of the Public Service Commission for the First District, No. 154 Nassau street, city of New York, at 2.30 o'clock P. M., October 13, 1908, at which hearing the said application will be considered.

*Further Ordered*, That notice of this hearing be given by mail to the Union Railway Company, to Frederick W. Whitridge, as receiver of the said Union Railway Company, to the New York Central and Hudson River Railroad Company, to the city of New York, to the corporation counsel and to the following property owners, being the owners of all the property on Two Hundred and Thirtieth street on the line of the proposed extension from Broadway to Bailey avenue, in the borough of the Bronx: Emma L. Moller, Cortlandt Godwin, George G. Godwin, Raynor Godwin, Waldo S. Godwin and Ada Godwin Randall.

Hearing held October 13th. The matter is not determined.

## SHORT NOTICE TARIFF ORDERS.

Pursuant to the provisions of Public Service Commissions Law, Section 29, orders granting permission to companies to put into effect changes in schedules, rates, fares or charges, or joint rates within less than thirty days after publication at stations and filing with the Commission, were issued in substantially the following form:

In the Matter of	
Filing on Short Notice by the .....	Tariff Order No. —.
.....Company of.....	
in regard to .....	

Whereas, the ..... Company, by ....., its ..... has made application in writing to this Commission under date of ....., 1908, for permission to ..... within ..... days after publication at stations and filing with this Commission,

Now, upon motion made and duly seconded, it is

*Resolved:* That permission be and is hereby granted to ..... the ..... Company to put into effect ..... days after publication at stations and filing with this Commission the ..... above mentioned.

## SHORT NOTICE TARIFF ORDERS ISSUED IN 1908.

ORDER NO.	Issued.	Company.	Permit granted to put into effect.	Num- ber of days' notice.
319	Mar. 20	Baltimore and Ohio Railroad Company.....	Official classification No. 31, and supplements 1, 2 and 3 .....	10
819	Nov. 6	Brooklyn Heights Railroad Company.....	Supplement No. 1 to its tariff P. S. C. N. Y. No. 1. "Trips of the Fulton street line east bound." .....	3
(Case No.) 1024	Dec. 22	Hudson and Manhattan Rail- road Company.....	Tariff P. S. C. 1 N. Y. No. 1. ("Fare of five cents be- tween points in Man- hattan Borough.") .....	1
188	Jan. 6	Long Island Railroad Company.	Tariff P. S. C. 1 N. Y. No. 68 (Rates for storage of carload and less than car- load freight at all sta- tions).....	3
363	Mar. 24	Long Island Railroad Company.	Freight tariff P. S. C. 1 N. Y. No. 81. (Tariff on manure from Blissville docks, East New York and Bushwick.) .....	3

SHORT NOTICE TARIFF ORDERS ISSUED IN 1908 — *Continued*

ORDER NO.	Issued.	Company.	Num- ber of days' into effect. Permit granted to put notice.
415	April 17	Long Island Railroad Company.	Supplement No. 1 to its tariff P. S. C. 1 N. Y. No. 15. (Excursion fare of thirty cents between Railroad avenue, New York, or Union Course and the Raunt, New York.).....
550	June 5	Long Island Railroad Company.	Supplement No. 1 to tariff P. S. C. 1 N. Y. No. 8. (Rates upon transpor- tation of organizations devoted to fresh air or other charitable work.)..
551	June 5	Long Island Railroad Company.	Tariff P. S. C. 1 N. Y. No. 25 (Rate for a special car for exclusive use of per- sons between Long Island City and Edgemere)....
644	July 21	Long Island Railroad Company.	Tariff P. S. C. 1 N. Y. No. 90. (Rates for car track storage).....
741	Sept. 29	Long Island Railroad Company.	Tariff P. S. C. 1 N. Y. E-23. (Relating to: (1) empty packages being returned to original shippers; (2) baggage checks accom- panied by orders for ship- ment of baggage by ex- press).....
743	Sept. 29	Long Island Railroad Company.	Supplement No. 3 to tariff P. S. C. 1 N. Y. No. 64. (Rules for the marking of packages, bundles or pieces of less than car- load freight).....
(Case No.)			2
1028	Dec. 29	Long Island Railroad Company.	Tariff P. S. C. 1 N. Y. No. 116. (Rate on oysters or clams in barrels or sacks less than carloads and correcting an error in tariff P. S. C. 1 N. Y. No. 110).....
333	Mar. 13	New York Central and Hudson River Railroad Company....	Rate per head on cattle from Dunwoodie and sta- tions south to 130th, 60th and 33d street sta- tions, New York city....
570	June 12	New York Central and Hudson River Railroad Company....	Supplement No. 2 to tariff P. S. C. 1 N. Y. No. 73. (Rate on minimum car- load weight of 40,000 pounds of flour made from grain only).....

\* Immediately after publication at stations and filing with this Commission.

SHORT NOTICE TARIFF ORDERS ISSUED IN 1908 — *Continued*

ORDER NO.	Issued.	Company.	Number of days' notice.
601	June 26	New York Central and Hudson River Railroad Company....	Permit granted to put into effect.
667	Aug. 7	New York Central and Hudson River Railroad Company....	Tariff P. S. C. 1 N. Y. No. 77. (Rates on fresh dressed meats in refrigerator cars.).....*
689	Aug. 25	New York Central and Hudson River Railroad Company....	Tariff P. S. C. 1 N. Y. No. 80. (Rates on glucose and grape sugar in car-loads from 60th street station, New York city, to Melrose Junction.)...1
696	Aug. 28	New York Central and Hudson River Railroad Company....	Tariff P. S. C. 1 N. Y. No. 26. (Commutation fares between New York city and stations on the Hudson, Harlem and Putnam divisions and between stations on the Putnam division and stations on the routes of the Interborough Rapid Transit Company).....3
774	Oct. 13	New York Central and Hudson River Railroad Company....	Supplement No. 8 to its tariff P. S. C. 1 N. Y. No. 73. (Rules regarding the marking of packages of peaches, pears, plums and quinces in lots of 10,000 pounds or more.).....3
816	Nov. 4	New York Central and Hudson River Railroad Company....	Circular 1, P. S. C. 1 N. Y. No. 90. (Transportation of explosives.).....1
1030	Dec. 29	New York Central and Hudson River Railroad Company....	Supplement to its tariff P. S. C. 1 N. Y. No. 88. (Charges for weighing cars on individual track scales of shippers and consignees.).....1
805	Oct. 7	New York City Interborough Railway Company.....	Supplement No. 2, P. S. C. 1 N. Y. No. 92. (Suspending classification of articles on the valuation basis.).....1
			Supplement to its tariff P. S. C. 1 N. Y. No. 1. (Amending routes.)....24

\* At once.

SHORT NOTICE TARIFF ORDERS ISSUED IN 1908 — *Concluded*

ORDER NO.	Issued.	Company.	Permit granted to put into effect.	Num- ber of days' notice.
561	June 9	New York, New Haven and Hartford Railroad Company.	Supplement No. 13 to its tariff P. S. C. 1 N. Y. No. 3. (Extending territory to which item No. 110 applies to cover stations in New York State on and east of the Hudson river.)	15
292	Feb. 28	Staten Island Rapid Transit Railway Company.....	Tariff of two dollars on school books between Rosebank and Fort Wadsworth.....	1
762	Oct. 6	Staten Island Rapid Transit Railway Company.....	Supplement No. 5 to its tariff P. S. C. 1 N. Y. No. 47. (Freight traffic.)...	0
320	Mar. 20	New York Central and Hudson River Railroad Company and other carriers.....	Supplement No. 5 to official classification No. 31. (Class rate on brooms.)...	15
581	June 16	New York Central and Hudson River Railroad Company, and other railroad companies....	Supplement No. 1 to Official classification No. 32. (Marking of freight in less than carload lots.).....	*
648	Aug. 3	New York Central and Hudson River Railroad Company and other carriers.....	Third supplement to tariff P. S. C. 1 N. Y. No. 66 (Track storage charges.)	5

**NOTE.**— Orders Nos. 320, 581 and 648, while referring specifically to the New York Central and Hudson River Railroad Company, are applicable to other railroad companies and carriers within the jurisdiction of this Commission.

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\* To become effective as to the New York Central and Hudson River Railroad Company July 1, 1908; as to other companies, within ten days after publishing at stations and filing with the Commission.

## FRANCHISE MATTERS NOT ARISING ON SPECIFIC APPLICATIONS OF COMPANIES.

**Brooklyn Heights Railroad Company.**—Removal of tracks in  
Fifty-second street, from Second avenue to the public dock,  
in the borough of Brooklyn.

Opinion of Counsel.  
Complaint Order No. 674.  
Hearing Order No. 695.  
Opinion of Commissioner Bassett.  
Discontinuance Order No. 817.  
Hearing Order No. 818.  
Opinion of Commissioner Bassett.

**COMPLAINT OF J. P DUFFY COMPANY,  
against**

## BROOKLYN HEIGHTS RAILROAD COMPANY.

## OPINION OF COUNSEL.

TRAVIS H. WHITNEY, Esq., *Secretary.*

August 7, 1908.

SIR.—Referring to your letter of August 5th, addressed to Mr. Semple, in which you ask for an opinion as to whether the Commission should take up the complaint of Joseph N. Tuttle against the Brooklyn Heights Railroad Company in regard to the right of the Brooklyn Heights Railroad Company to maintain tracks and store cars on Fifty-second street, Brooklyn, I beg to advise you as follows:

From an examination of the files it appears that Mr. Tuttle's complaint, dated June 9, 1908, alleged that the Brooklyn Heights Railroad Company wrongfully used the Fifty-second street tracks for storage of cars.

It appears also that Mr. Tuttle's complaint has been served upon the Brooklyn Heights Railroad Company and that that company on June 24, 1908, answered, admitting that cars had formerly been allowed to occupy the streets by employees in disobedience of orders of the company, and that the cars had now been removed and special orders had been issued to prevent a repetition of the offense.

The complaint was made under section 48, subdivision 2 of the Public Service Commissions Law, setting forth acts done claimed to be in violation of certain provisions of law and of the terms and conditions of the railroad's franchise. A copy of this complaint was properly forwarded to the corporation complained of, accompanied by an order requiring that the matters complained of be satisfied. An answer to this was received, in effect admitting violations of law in the past and stated that the violations had ceased and would not be continued. Under the provisions of this subdivision the Commission, if satisfied with the company's answer, need take no further action on the matters complained of.

If, however, the Commission is not satisfied it may, after a hearing, direct the company to satisfy the cause of the complaint by discontinuing storing of cars in the street.

I have confined myself to a discussion of the storing of cars in the street for the reason that that seems to be the only matter raised by Mr. Tuttle's complaint of June 9th, and the Commission by serving that complaint upon the company has practically confined itself in that proceeding to the matters contained in the complaint.

I note that in your letters of July 7th and July 30th, addressed to Joseph N. Tuttle, Esq., you properly advised Mr. Tuttle that the Borough President was the proper authority to secure the removal of the tracks and cars from Fifty-second street. It appears, however, from Mr. Tuttle's answers that he has understood your letters to mean that the Borough President was the only proper authority and that the Commission had no power to order the company to discontinue its practice of obstructing Fifty-second street by storing cars therein. I believe that Mr. Tuttle is right in pointing out that the Commission has power to investigate and issue an order in the matter of the storage of cars in the street. It appears that the Borough President is prevented from acting by an injunction, and I think it would be quite proper for the Commission to hold a hearing and issue an order without waiting for action by the Borough President.

Respectfully yours,

(Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

Complaint Order No. 674 (see form, note 1) issued August 14th.

Hearing Order No. 695 (see form, note 3) issued August 28th.

Hearing held September 16th.

OPINION OF COMMISSION.  
(Adopted November 4, 1908.)

COMMISSIONER BASSETT:—

The complainant seeks an order of this commission directing the Brooklyn Heights Railroad Company to remove its tracks in Fifty-second street between Second avenue and the public dock, in the borough of Brooklyn on the ground that the company has no franchise right in this street between the points named.

It appears that prior to the filing of the complaint with this Commission steps had been taken by the president of the borough of Brooklyn (the proper local authority), for the removal of these tracks and that an action for an injunction had been brought by the company against the city and against the borough president to restrain such interference, and a temporary injunction had been procured restraining such interference. It appears further that this injunction is still in force, pending a trial of the action, but that there has been delay in bringing the action to trial, and the complainant seeks to expedite matters by procuring an order of this Commission directing the removal of the tracks.

The complaint is made under subdivision 2 of section 48 of the Public Service Commissions Law. It is insisted that under this subdivision the Commission has no discretion as to whether or not it will proceed in the matter and must proceed with the investigation and final order, regardless of the pending injunction suit. I do not so construe the language used in this subdivision. Power is granted to proceed with an investigation and to take such action as the facts justify if "it shall appear to the Commission that there are reasonable grounds therefor." It is thus evident that it is intended that the Commission shall exercise discretion as to whether it will proceed or not.

I do not think the Commission should ordinarily say that reasonable grounds for an investigation and final order are presented when it appears that the question of legality or illegality is at the same time pending and undetermined in an action in the Supreme Court. The fact that such an action is pending, involving allegations on the one hand and denials on the other, is some indication that there is a doubt as to the existence of reasonable grounds. There would also be serious danger of a conflict of jurisdiction. The Commission might decide one way and the court might decide the other way; and if there were no danger of a conflict of jurisdiction, ordinary rules of comity would constrain the Commission in the exercise of sound discretion to decline to interfere while the matter is still pending in the courts.

That the matter has been delayed in the courts cannot, in this case, it seems to me, be sufficient reason for interference. It does not appear that there is any good reason why the action cannot be tried and determined at an early date.

I therefore recommend that the complaint be dismissed for the reasons stated, but without prejudice to further hearings and action thereon by the Commission, in the event that reasonable grounds therefor shall be brought to the attention of the Commission.

The following discontinuance order was issued and Order No. 818 providing that an inquiry be made under Public Service Commissions Law § 45 into the same matters, was issued.

J. P. DUFFY COMPANY by JOSEPH N. TUTTLE,  
Attorney, Complainant,  
*against*  
BROOKLYN HEIGHTS RAILROAD COMPANY,  
Defendant.

"Removal of tracks in Fifty-second street, from  
Second avenue to the public dock in the borough  
of Brooklyn."

After Hearing Order No. 695, dated August 28, 1908.

DISCONTINUANCE ORDER  
No. 817.  
November 4, 1908.

This matter coming on upon the report of the hearing had herein on September 16, 1908, and it appearing that said hearing was held pursuant to Order No. 695

of this Commission, dated August 28, 1908, and returnable on September 16, 1908, at 2:30 o'clock P. M., which order was issued upon the complaint and answer herein; and it appearing that said order was duly served upon said complainant and upon said Brooklyn Heights Railroad Company, and that said service was by said company duly acknowledged; and it appearing that said hearing was held by and before the Commission on the matters in said complaint, answer and order specified, on September 16, 1908, before Mr. Commissioner Bassett, presiding; Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission; J. J. Coughlin, Esq., attorney, appearing for the complainant, and A. M. Williams, Esq., appearing for said railroad company; and testimony having been taken upon said hearing, and it having been made to appear after the proceedings on said hearing that the matters embraced in said complaint and answer are more properly heard under an inquiry in accordance with section 45 of the Public Service Commissions Law,

Now, therefore, on motion made and duly seconded, it is  
*Resolved*. That the proceedings upon said complaint be, and the same hereby are discontinued. It is further

*Resolved*, That this action shall be without prejudice to an order for further additional hearings and action thereon by the Commission in respect to any of the matters covered by said complaint, answer, and order for hearing, or the proceedings thereon.

In the Matter  
 of the

Operation by the BROOKLYN HEIGHTS RAIL-  
 ROAD COMPANY through Fifty-second street from  
 Second avenue to the public dock, in the borough  
 of Brooklyn, without having first obtained a cer-  
 tificate of permission and approval under section  
 53 of the Public Service Commissions Law.

ORDER No. 818.  
 November 4, 1908.

*Resolved*, That under section 45 of the Public Service Commissions Law an inquiry be made, beginning November 9, 1908, at 2:30 o'clock in the afternoon, to determine whether the Brooklyn Heights Railroad Company is violating the provisions of section 53 of the Public Service Commissions Law, in that said company is operating cars in Brooklyn on Fifty-second street from Second avenue to the public dock, without having first obtained a certificate of permission and approval under section 53 above mentioned.

Hearings were held November 9th, 16th, 23d and 30th.

\*[The tracks of the company on Fifty-second street, Brooklyn, between Second avenue and the public dock are not maintained unlawfully.]

OPINION OF COMMISSION.

COMMISSIONER BASSETT:—

The J. P. Duffy Company, a corporation using trucks in carrying on its cement pipe business, complained against The Brooklyn Heights Railroad Company because it maintained tracks on the surface of Fifty-second street, in the borough of Brooklyn, between Second avenue and the public dock and asserted that said tracks were laid and maintained without right. The Commission directed an inquiry to be held in order to learn whether the facts are sufficient to enable it to reach an opinion that the said company has failed or omitted to obtain certificate of permission and approval under section 53 of the Public Service Commissions Law. The reason why such a certificate might be necessary is because of the provision of that section that no street railroad corporation shall exercise any franchise or right not heretofore lawfully exercised without first obtaining the certificate of permission and approval. In case the inquiry should show that the company does not lawfully maintain its tracks on this street it would become the duty of the Commission under section 57 of the Public Service Commissions Law to direct counsel to commence an action in the Supreme Court to prevent the continuation of the illegal act.

The Commission would not have been inclined to make this inquiry were it not for the fact that the complaining corporation showed that the borough president of

\* See footnote, page 9.

Brooklyn more than a year ago threatened to take up these tracks, whereupon the railroad company obtained from the Supreme Court a temporary injunction restraining him from taking such a course, and that such injunction is now in effect, no steps having been taken to bring the action to trial, although the Corporation Counsel, it is alleged, has had ample time to do so. While this situation continued it would appear as if the question of legal rights possessed by the company was an open one and that it might become the duty of the Commission to have its counsel obtain a judicial determination thereon.

On July 11, 1887, the board of aldermen of the city of Brooklyn granted to the South Brooklyn Street Railroad Company the right to "construct, maintain, use and operate a street surface railroad through, upon and along any streets and avenues and portions of streets and avenues hereinafter designated; to wit, \* \* \* and the portion of Fifty-second and Fifty-third streets between Second avenue and the said town of New Utrecht \* \* \*, and also through, upon and along any private property in the line of such streets and avenues needed for such railroad."

The foregoing street descriptions do not include Fifty-second street between Second avenue and the public dock. No subsequent consent of the city to place tracks here has been granted. It appears, however, that when this consent was granted Fifty-second street between Second avenue and the public dock was not a street but was private property. Furthermore, the railroad company appears subsequently to have laid its tracks while it was still private property. It owned half of the land and obtained easements over the other half. After the tracks were laid the city of Brooklyn began condemnation proceedings to take for street purposes the land within the mapped street lines. When the city of Brooklyn opened streets by condemnation it took not the fee but an easement for street purposes. As the tracks appear to have been rightfully laid in 1891 or prior thereto and the city took title in 1892 it is obvious that the railroad company continued to possess the right to maintain and use its tracks within the street unless such right was taken away from it in the condemnation proceedings. An examination of the proceedings taken shows that the city neither condemned nor paid for the tracks of the company. It does not appear that the street was dedicated prior to the condemnation proceedings. On the contrary, the records contain evidence that the street was not graded prior to March 2, 1891. Nor is there anything to show that the city had performed any act in the way of making improvements or taking charge of the street in token of the acceptance of a dedication. If the company had the right to lay its tracks originally that right has continued even though the land on which they were laid later became subjected to the public easement for street purposes.

There is some question about the exact location of the tracks in 1891 but it is not suggested by the complainant or any one else that the tracks are now greater in extent than they were at that time. If it can be proved that part of the track was been laid since 1892 without obtaining the consent of the city then as to that portion the company is plainly in the wrong. It is also possible that some future litigation may show that this was a dedicated street and that the city had performed acts accepting the dedication prior to 1891, in which case the street would have been a public street and the company would have needed to obtain the consent of the city to place tracks and operate upon them. However, the fact that the city in 1892 deemed it necessary to open the street by condemnation proceedings would go far to negative such a view but I do not consider that the taking by condemnation proceedings is conclusive proof that there had not been a prior dedication and acceptance thereof.

The South Brooklyn Street Railroad Company was merged with the Brooklyn City Railroad Company. Later the Brooklyn City Railroad Company leased its property to The Brooklyn Heights Railroad Company, the operating company, complained against. It would thus appear that the rights of the South Brooklyn Street Railroad Company had passed to the operating company now in possession.

The Commission through its franchise bureau carried on extensive investigations and the results were presented at the hearings. These investigations revealed many

more facts than were brought forward by the complaining party, indeed the complaining party relied quite entirely on the facts developed by the franchise bureau. The complainant was given the fullest possible opportunity to make use of the facts brought forward by our bureau and did not dispute any of these facts. It does not seem to me that the inquiry has shown that the company maintains and operates these tracks unlawfully. As the hearings were in the nature of an inquiry there is no need of an order of dismissal.

December 14, 1908.

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### Fulton Street Railroad Company.— Restoration of cars on the Fulton street line.

Complaint Order No. 731.  
Extension Order No. 751.  
Hearing Order No. 800.  
Opinion of Commissioner Maltbie.

**COMPLAINT OF MALLORY STEAMSHIP COMPANY  
and others, against**

**THE FULTON STREET RAILROAD COMPANY and  
GILBERT H. MONTAGUE, Receiver**

Complaint Order No. 731 (see form, note 1) issued September 18th.

Extension Order No. 751. (see form, note 2) issued September 29th.

Hearing Order No. 800 (see form, note 3) issued October 23d.

Hearings were held November 25th and 30th.

#### OPINION OF COUNSEL.

December 11, 1908.

**Hon. MILO R. MALTBIE, Commissioner.**

SIR.—I have been asked for an opinion in regard to the several methods of procedure possible in the matter of the discontinuance of service on the Fulton street line in the borough of Manhattan. It is evident from the testimony in the hearing before the Commission on the complaint of the Mallory Steamship Company against Fulton Street Railroad Company that the Fulton Street Company has no capital with which to operate its line and an order issued to that company would be futile so far as the resumption of operation is concerned. There remain three different courses of action open to the Commission, as follows:

1. To request the Attorney-General of the State to institute an action to annul the franchise of the Fulton Street Railroad Company.

2. To issue an order against the Metropolitan Street Railway Company and its receivers for a hearing on the question whether they shall be required to resume operation on the Fulton street line.

3. To await the consummation of the foreclosure action now pending, which would eliminate the heavy fixed charges that now burden the road, and make it possible for a new company to purchase the franchise and begin operation on a simpler basis.

(1) As to the first course of procedure, it is plain that the Fulton Street Company has made itself liable to an action by the Attorney-General to annul its franchise. The franchise, as it was granted by the city, expressly provides as a condition of the grant that cars "shall be run as frequently as the convenience of the public may require." For six months past the company has failed to provide any service at all on this much-traveled route through an exceptionally busy territory. This is a clear violation of the condition of the franchise which I have quoted, and the Attorney-General and the court would unquestionably, in my judgment, treat such violation as ground for the annulment of the franchise. It would be competent for the Commission to forward to the Attorney-General a transcript of the testimony taken in the pending hearing before the Commission and to call the attention of the Attorney-General to the condition of the company's franchise and to the testimony which shows failure to comply with that condition.

There is a possible objection to this procedure in the fact that the annulment of the franchise might wipe out trackage rights which the Fulton Street Company has over portions of Fulton street and that it might be impossible for a new company to procure those rights from the companies that control them. The franchise of the Fulton Street Railroad Company covers the entire length of Fulton street,

but there are several sections of track in that street which do not belong to that company and over which that company has been operating under trackage agreement with other companies. On the northerly or westbound track there is a section of eight hundred forty-six (846) feet, from a point one hundred twenty (120) feet west of Broadway to Greenwich street, belonging to the Ninth Avenue Railroad Company, and on the southerly or eastbound track there is a section of ten hundred thirty (1030) feet between Washington street and the said point one hundred twenty (120) feet west of Broadway belonging to the Ninth Avenue Railroad Company. Section 102 of the Railroad Law, as well as traffic conditions in Fulton street, precludes the possibility of laying an additional track beside the track of the Ninth Avenue Railroad Company; and the power to compel one road to allow another to use its tracks is limited to cases in which the track desired to be used is one thousand (1,000) feet or less.

If, therefore, the trackage rights now enjoyed by the Fulton Street Railroad Company over the tracks of the Ninth Avenue Company were destroyed, as I apprehend they would be by the forfeiture of the franchise to which they are incident, there would be a stretch of ten hundred thirty (1030) feet on the southerly track where it would be impossible for a new company to operate a road without the consent of a company that is affiliated with the Metropolitan Street Railway Company and that would possibly be interested in defeating the construction of a new road. In such a case the only alternative would be to run the new line through some other street than Fulton street for part at least of its eastbound route between Washington street and Broadway.

(2) The method of proceeding against the Metropolitan Street Railway Company by hearing order for the purpose of requiring them to resume operation on Fulton street would seem likely to bring about a more speedy resumption than the first method considered. The contract of the Metropolitan Street Railway Company with the Fulton Street Railroad Company does not appear to have been abrogated; the Metropolitan Company still has a right to operate over the Fulton street line, and an order directing the Metropolitan Company and its receivers to operate said line might be sustained on the ground of public necessity, unless it should appear that compliance with such an order would involve substantial loss.

(3) The third alternative of awaiting the completion of the foreclosure action has, like the second alternative, the advantage of preserving a line through Fulton street. In one way, it would thus be more desirable than the first alternative from the point of view of public convenience as well as from the point of view of the holders of Fulton Street Railroad bonds, which are outstanding to the amount of \$500,000.

In another respect, however, the completion of the foreclosure and the assumption of operation on Fulton street by a new company might involve a disadvantage to the public. The present franchise entitles the company to charge a five-cent fare, and if the road were operated under the old franchise by a company other than the Metropolitan, there would be no means of compelling a transfer to and from north and south lines, unless by an order for joint rates similar to the order made in the pending Fifty-ninth street litigation.

In case the franchise should be annulled it might be possible to effect the formation of a new company which would operate through Fulton street or adjacent streets for a fare less than five cents, in view of the short run on that route.

Respectfully yours,  
 (Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

\*[The franchise of the company ought to be annulled for non-user.]

OPINION OF COMMISSION.  
 (Adopted December 29, 1908.)

COMMISSIONER MALTBIE:—

This matter came before the Commission through the filing of a petition signed by some four hundred persons, firms and corporations, praying for the resumption of service upon the Fulton street line. The communication was referred to the receiver of the Fulton Street Railroad Company, who replied that he had been unable to locate any funds belonging to the company, or to procure any money with which to undertake the operation of the road. An order for a hearing upon November 5th was issued by the Commission upon October 23d. Hearings were held at which there appeared representatives of the complainants and of the receivers for the Metropolitan Street Railway Company, Mr. Gilbert H. Montague, receiver of the company, and Mr. William C. Herbert, of counsel to the receiver, besides the various experts from the staff of the Commission. From the evidence presented at these hearings and the documents upon file in this office, the following facts appear.

The franchise under which cars have been operated upon the Fulton street line was granted to the North and East River Railway Company in 1887, this company

\* See footnote, page 9.

being the successful bidder at the public auction of the franchise by the comptroller in May of that year. The company agreed to pay 35 per cent. of its gross receipts for the franchise in addition to the statutory minimum, but no payment was ever made, and in 1893 an act of the Legislature authorized the Sinking Fund Commission of the city to modify this obligation. Two years later (1895) the Commission reduced the compensation to 5½ per cent.—½ of 1 per cent. above the statutory minimum.

The route covered by the franchise extends from South street through Fulton street to West street, and thence along West street to and connecting with the Cortlandt street Ferry and the Chambers street ferry, but the company has never laid track upon all of this route. The franchise provided among other things that cars should be run "as frequently as the convenience of the public may require"; that the fare charged should not be more than five cents from any point on its route to any other point on its route or to any point on any route connecting therewith, or vice versa; that the company should repair and maintain the portion of the street between the tracks and the rails and for a space two feet outside of the rails; that the company should remove entirely from the street the snow and ice upon the portion of the streets occupied by it; that any motive power might be used, subject to approval, except steam; and that the plans upon which the road was to be built should be the Bentley-Knight Electric Railway Company plans.

*Lease to Metropolitan Co.*—The North and East River Railway Company seems not to have had a very successful career, for its property was foreclosed and sold by referee on October 18, 1895, to John H. O'Rourke for \$30,000. There is no inventory of the property, but it could not have been very extensive, notwithstanding the fact that the company had issued \$300,000 of stock and \$250,000 of bonds, for the report made to the railroad commissioners for the period ending June 30, 1896, stated that there were 1.02 miles of single track, and ten cars and sixty horses belonging to the line. Within two weeks Mr. O'Rourke transferred what property he purchased to the Fulton Street Railroad Company, just incorporated, and received in return securities of a par value of \$1,000,000. Of this amount \$500,000 were in stock, and \$500,000 in 100-year, four per cent. first mortgage bonds. Early in 1896 all of the stock found its way into the hands of the Metropolitan Traction Company, and from thence it went to the Metropolitan Street Railway Company, etc. Following this change in stock ownership, the Metropolitan Company entered into an agreement with the Fulton Street Railroad Company for the operation of its property. The Metropolitan Company agreed, in consideration of the lease which was to run 1,000 years, to guarantee the payment of the principal and interest of the bonds, due in 1995. At present \$300,000 of the bonds are held by the Equitable Life Assurance Society, and the remaining \$200,000 are in the hands of various persons.

*Results of Operation.*—From early in 1896 to June 1, 1908, the lines of the Fulton Street Railroad Company were operated by the Metropolitan Street Railway Company or its successors, who paid the interest on the bonds as a rental for the property (\$20,000 per annum—from 30 to 70 per cent. of the gross receipts on the line). Upon June 1st the receivers for the Metropolitan Company ceased to operate horse cars upon the line, and a receiver was later appointed by the State court to take charge of the property of the Fulton Street Railroad Company. During the year ending June 30, 1907, 530,668 revenue passengers and 230,256 transfer passengers were carried upon the line, which shows that the operation of cars upon this road was of convenience to a considerable number of people, a number perhaps larger than was to be expected in view of the character of the service.

*Property of Company.*—According to sworn reports made to this Commission, the Fulton Street Railroad Company owns 1.05 miles of single track, horse-car line, and this is all the track it owns. The sworn reports made to the Railroad Commission for previous years state that the company owned at various times from seven to thirteen cars and from forty-two to sixty-five horses. In the course of the attempt to discover what had happened so suddenly to these cars and

horses why they were reported one year and not the next — the officials of the Metropolitan Company testified that the question of actual ownership was a question for the courts, that the cars and horses received from the Fulton street company in 1896 had ceased to have an existence, that they had been replaced by the Metropolitan Company from time to time, that the number assigned to the Fulton street line from their general stock had varied from year to year according to the demands of traffic on that line, that the reports sworn to were made without consulting counsel as to the legal ownership of these cars and horses, and that the true meaning of the reports is that so many cars and horses had merely been assigned for use on the line. It is true that there is a legal question involved, and if the attitude of the receivers of the Metropolitan Street Railway Company is correct, the Fulton Street Company has no rolling stock or horses. No steps are being taken by the receiver of the Fulton Street Company to have this question immediately settled by the courts.

*Trackage Rights.* Besides certain books and papers, now in his possession, the receiver has stated that he has been unable to locate any other property or funds. The counsel to the Commission has examined the numerous documents that have been produced at the hearings to discover if possible whether the Fulton Street Railroad Company has any trackage rights of value over lines belonging to other companies. It appears, as stated above, that the Fulton Street Company has never built tracks over the entire route covered by the franchise. Other companies claim to have franchises over parts of this route also, and have laid tracks. As a result, neither the Fulton Street Company nor any other company owns either the north or south track on Fulton street from river to river. The Fulton Street Company owns the south track from West street to Washington street and from 120 feet west of Broadway to South street. The link between these two sections is owned by the Ninth Avenue Railroad Company. The north track is owned by the Fulton Street Company from West street to Greenwich street and from 120 feet west of Broadway to William street. The section between is owned by the Ninth Avenue Company and the easterly end by the Bleecker Street and Fulton Ferry Railroad Company. The tracks on West street are owned by the Central Park, North and East River Railroad Company. Hence, when a car is run over the entire route of the franchise of the Fulton Street Company, it changes from tracks owned by one company to those of another eight times, involving four companies. When the Metropolitan Company operated cars in Fulton street, the situation was simple, as it was the lessee of all four companies; but if the receiver of the Fulton Street Company were to attempt to operate now, he would be obliged to make an agreement with the Metropolitan Company for use of tracks leased by it, or to find trackage rights in contracts handed down from an earlier period.

There has been found an agreement between the Bleecker Street and Fulton Ferry, Railroad Company (and the Twenty-third Street Railway Company its leasee) and the North and East River Railway Company — the predecessor of the Fulton Street Company. It is dated October 16, 1888, and provides that the North and East River Company may use the tracks of the first named company from William street to South street (about one-third of a mile) for some eighty-six years upon payment of \$5,000 per annum, all charges for reconstruction, maintenance and repairs to be borne by the operating company. If the Twenty-third Street Company should elect to use the tracks of the North and East River Company between Broadway and South street, it might do so, paying the same rental. In 1896, this agreement was modified, the rental to be paid by the Fulton Street Company being reduced to \$375 per year.

Under an agreement dated July 1, 1890, to run for thirty years, the Ninth Avenue Railroad Company granted to the North and East River Company rights to operate over the tracks of the former from Broadway and Washington street to West street (equivalent to over one-third of a mile of single track) at an annual rental of \$2,000. The latter company was to reconstruct the track, maintain it, etc.

Upon May 2d of the same year, the Central Park, North and East River Railroad Company gave the same company trackage rights on West street from Fulton street to Cortlandt street ferry and from Fulton street to Barclay street ferry. The rental was fixed at \$2 per year per linear foot of double track, equivalent to \$5,280 per mile of single track, and was to be subject to readjustment every ten years. Agreement runs until 1960, but as it was made nontransferrable, it is probable that the Fulton Street Company has no rights thereunder. By another agreement of the same date, the North and East River Company agreed to abandon "all claim and right at any time hereafter to extend or continue its route on West street from said Barclay street to said Chambers street."

*Summary.* If these contracts are still valid, the Fulton Street Company owns trackage or has trackage rights, by paying \$2,375 per year, for the entire length of Fulton street from river to river, and cars could be operated thereon at once. No cars have been operated regularly over any of the lines since June 2d of this year, except between Church and Greenwich streets where electric cars are run, and the receiver of the Fulton Street Company has stated at the hearings that he has no funds and that the bondholders have thus far refused to raise funds to purchase cars and horses for operation. The stock has been fully paid in, and as the bonds far exceed the value of the physical property, it is probably impracticable to expect the stockholders to furnish any money or to attempt to sell a further issue of bonds, even if the Commission had authority to direct this to be done. The Metropolitan Company ceased to operate the line largely because of the heavy rental (interest charge), and it would seem that a company is in a precarious condition financially that has \$1,000,000 in securities outstanding which are represented by a mile of single track, by trackage rights as above described, and by a franchise for which nothing properly chargeable to capital was paid to the city. It may be that the Metropolitan Street Railway Company is obligated to pay the interest on the bonds, but this question is to be litigated; and even if the contention of the bondholders is correct, it will furnish no immediate solution of the problem. In my opinion, therefore, it would be futile to order the company to operate cars.

*Recommendation.* There are four courses of action open to the Commission:—

1. To postpone final decision until the consummation of the foreclosure action now pending, or until a scheme for reorganization has been worked out by the corporations concerned.
2. To issue an order against the Metropolitan Street Railway Company and its receivers to resume operation under the contract made with the Fulton Street Railroad Company.
3. To issue an order against the Fulton Street Railroad Company and its receiver, requiring adequate service upon the line.
4. To request the Attorney-General to institute an action to annul the franchise of the Fulton Street Railroad Company for nonuse.

The first course of procedure seems unwise. The foreclosure suit is not being pushed rapidly, and no one can prophesy when it will be finally settled. The complete reorganization of the roads is also some distance in the future, and no one can fix a definite date when it will be accomplished. The line carried in 1906-7 over 750,000 passengers, and the petition presented to the Commission contains the names of some 400 persons, firms and corporations who are affected. I have also been advised that a company will be organized to operate a road in Fulton street if a franchise can be secured. In view of these facts, it would seem unwise to postpone for an indefinite period the adoption of any plan which would bring relief.

The second suggestion is probably futile. The Fulton street line cannot be operated successfully without rights over the tracks belonging to other companies. As pointed out above, one of the agreements for trackage rights was made nontransferrable and can not be enforced by the Fulton Street Company or any one representing it. It is a question whether the others could be utilized, especially if the Metropolitan Company should be unwilling to operate, as is clearly the case.

If the contract between the Metropolitan Company and the Fulton Street Company were enforced, it would require the payment of \$20,000 in interest upon the bonds outstanding as a rental. It is possible that the contract made in 1898 obligates the Metropolitan Company to pay this interest regardless of the operation of the road. If such is the case, the Metropolitan Company might wish to operate if there would be any excess of receipts over operating expenses. However, the rental is so out of proportion to the value of the physical property, that it would seem unwise for the Commission to take any action which would directly or indirectly indicate that the contract was a proper one, that it should be executed and that the rental was reasonable.

The third course might seem to be the most natural one to pursue; but the receiver has no rolling stock and no funds with which to purchase cars. The stock of the company is fully paid-up and nonassessable. The bondholders have been asked to furnish funds and have refused. It is possible that the interest on the bonds might be used if it were paid by the Metropolitan Company to the receiver, but the Metropolitan Company has refused payment. It is likely, therefore, that any order against the receiver would be futile and would only complicate the situation without giving relief or making progress.

Further, as just stated, the Fulton Street Company does not own continuous trackage; it owns several disconnected sections. Its title to trackage rights over the lines of other companies is weak, especially against companies that are somewhat hostile. Under such conditions, it would doubtless be impossible to operate a line of cars from river to river.

We are brought, therefore, to the fourth course, which appears to be the only one that will be productive of any immediate results. For seven months neither the Fulton Street Company nor its receiver nor the receivers for the Metropolitan Company have operated cars over the Fulton street route. The franchise granted by the city expressly provides that cars "shall be run as frequently as the convenience of the public may require." It is clear, therefore, that the requirements of the franchise have been violated and that the Attorney-General could very properly bring a suit for the annulment of the grant.

I recommend, therefore, that the Commission communicate with the Attorney-General, forward him a transcript of the testimony taken at the hearings, and request that he bring an action to annul the franchise rights upon Fulton street.

It was ordered that the recommendation contained in the last paragraph be complied with.

**Long Island Railroad Company.—Proposed discontinuance of annex boat plying between Long Island City and Pier 8, East river.**

Complaint Order No. 688.  
Opinion of Counsel.  
Hearing Order No. 701.  
Opinion of Commissioner Bassett.  
Dismissal Order No. 841.

**COMPLAINT OF LOUIS WINDMULLER,  
against**

**THE LONG ISLAND RAILROAD COMPANY.**

Complaint Order No. 688 (see form, note 1) issued August 21st.  
Hearing Order No. 701 (see form, note 3) issued August 28th.  
No hearing held.

**OPINION OF COUNSEL.**

October 28, 1908.

Hon. EDWARD M. BASSETT, *Commissioner.*

Sir.—I have received your favor of September 23d, transmitting papers in the matter of the proposed discontinuance of the Wall Street Annex ferry of the Long Island Railroad Company, and asking for an opinion in writing whether I see any

ground upon which the Commission after discontinuance of the ferry can order its reinstatement; also whether I see any grounds upon which the Commission may order the company not to discontinue the ferry service.

I am informed that since your letter was written this ferry service has been discontinued. However, in answer to the second question I would say that in my opinion the Commission would have no power to make an order prior to any proposed discontinuance of service directing the company not to discontinue the service. Section 48, subdivision 2 of the Public Service Commissions Law provides that upon complaint in writing setting forth "any act or thing done or omitted to be done" in violation of any provision of law or of the terms and conditions of the company's franchise or charter, the Commission may proceed as set forth in that section "and take such action within its powers as the facts justify." The language used indicates clearly that no power is granted to make an order in a case of threatened violation of law or of the terms and conditions of the company's franchise or charter, but only in a case where a violation has actually occurred. However, in this connection I would call attention to section 57 of the Public Service Commissions Law under which the Commission could proceed in case of a threatened violation of law. This section is in part as follows:

"Whenever either Commission shall be of opinion that a common carrier, railroad corporation or street railroad corporation subject to its supervision is failing or omitting or about to fail or ought to do anything required of it by law or by order of the Commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the Commission, it shall direct counsel to the Commission to commence an action or proceeding in the supreme court of the state of New York in the name of the Commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction."

Does the discontinuance of the ferry mentioned constitute a violation of law or of the terms and conditions of the company's franchise or charter? Unless such discontinuance constitutes such a violation the Commission has no power to act in the matter.

It is claimed by the railroad company that the ferry service mentioned was instituted by the company as a voluntary matter; that the company is under no contractual obligation to operate the ferry; that there is no obligation in the charter or franchise under which the company operates requiring it to operate this ferry; and that the company has a right to discontinue the service at any time and surrender such franchise rights as it may have to operate the same.

The original charter of the Long Island Railroad Company does not in any way authorize use by the company of ferry boats between Hunter's Point and the city of New York, although section 22 of the charter authorizes the company to "purchase or employ one or more steamboats for the conveyance of passengers and goods between the eastern terminus of said railroad and any other railroad incorporated by the Legislatures of Connecticut or Rhode Island." However, on April 18, 1859, an act was passed, entitled "An act supplementary to the charter of the Long Island Railroad Company," section 5 of which is claimed to authorize the use of ferry boats between Hunter's Point and New York city, and hence to authorize the use of such boats upon the line in question.

This section is as follows:

"The said Long Island Railroad Company may also purchase or employ one or more steamboats or lighters for the conveyance of their passengers and freight between the steam terminus of their road at Hunter's Point and the city of New York; provided that the same shall in no manner interfere with the rights of the mayor, aldermen and commonalty of the city of New York." (L. 1859, ch. 444, § 5.)

It is not entirely clear whether the Legislature intended to authorize the company to operate a ferry or whether it intended merely to give the company power to purchase or hire boats, so that such action by the company could not be claimed to be *ultra vires*.

The decision of the United States Supreme Court in December, 1858, that the purchase by a railroad company of a steamboat to run in connection with the railroad where no power to make such purchase had been granted by the Legislature, was *ultra vires*, may have accounted for the enactment of this section.

*Pearce v. Madison & Indianapolis R. R. Co. and Peru and Indianapolis R. R. Co.*, 62 U. S. (21 How.) 441.

Whatever may be the proper construction of this section, there would seem to be no question that under section 54 of the Railroad Law, the company is given full power to purchase and hire boats and to operate the same, as a ferry over the route in question provided it can procure the necessary franchise rights from the city of New York. This section is as follows:

"Any steam railroad corporation incorporated under the laws of this state, with a terminus in the harbor of New York, may purchase or lease boats propelled by steam or otherwise, and operate the same as a ferry or otherwise, over the waters of the harbor of New York, but this section shall not be construed to affect the rights of the cities of New York and Brooklyn."

By the Montgomerie Charter of 1730 full power is granted to the Mayor, Aldermen and Commonalty of the City of New York to control all ferries that may be established between Manhattan Island and Nassau Island (now Long Island) and it is provided that no one without the consent, grant or license of said city shall have any control over the ferries or possess any power in regard to them.

Montgomerie Charter, §§ 15, 37.

These powers over ferries have been continued and strengthened in subsequent McClenahan, ferry leases and railroad grants, (1860) p. 5.  
Mayor etc., of New York v. Starin, (1887) 106 N. Y. 1.

Section 71 of the present charter is as follows:

"The rights of the city in and to its water front, ferries, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places are hereby declared to be inalienable."

Section 826 of this charter provides that the board of docks shall have power to lease the franchise of any ferry or ferries belonging to the city and also to lease along with such franchise the wharf property, including wharves, piers, bulkheads and structures thereon and slips, docks, and water fronts adjacent thereto, used or required for the purposes thereof; all leases to be subject to the approval of the commissioners of the sinking fund.

We will now inquire whether the company has acquired from the city of New York any franchise for the operation of the Wall Street Annex Ferry.

Under date of September 14, 1908, Mr. Delos F. Wilcox, Chief of the Bureau of Franchises of the Commission made a report concerning this matter which indicates that the contention of the company is correct and that the company has no franchise for the operation of this line. Mr. Wilcox states that he is informed by the Dock Department of the City of New York that the company has no arrangement with the city whatever in regard to this service. He says: "The Long Island Railroad Co. is enabled to land its passengers at Pier 8 through an arrangement with the lessee of this pier, an arrangement similar in kind to that which any excursion boat might make. The old Pine Street Ferry franchise expired January 1, 1906, and was not renewed. The present annex service was substituted for the Pine Street Ferry Service."

The company having had no franchise from the City of New York for the operation of this line, the abandonment of the line could not constitute a violation of the provisions of any city franchise. Unless, therefore, the abandonment constituted a violation of the charter or of the laws above mentioned, the Commission is without power to order the restoration of the line.

The charter itself has not been violated, as it contains no provision with reference to the ferry mentioned. Has there been a violation of section 5 of the Supplemental Act of 1859, or of section 54 of the Railroad Law? In my opinion there has been none. In my opinion these statutes are permissive only, and not mandatory. A supplement to a charter or a general law, unless containing mandatory language, generally amounts to a mere license. There is a clear distinction between statutes which are mandatory and those which are permissive only.

Elliott on Railroads, Vol. I, § 60.  
Northern Pacific Railroad v. Dustin, 142 U. S. 492, 499.  
People v. N. Y., L. E. & W. R. Co., 104 N. Y., 58.

If either of the statutes be regarded as mandatory, it seems to me the company is complying therewith as long as it operates a ferry line between Long Island City and Manhattan. It still operates the Thirty-Fourth Street ferry line between these points. However, in my opinion these statutes amount to a license to the company to operate ferries or not, at its option, provided it can obtain a franchise from the proper municipal authorities permitting it to do so. As has been seen, no municipal franchise had been procured. The company, therefore, in discontinuing the line mentioned was not guilty of any violation of these statutes, and was within its rights in discontinuing the service, and the Commission is without power to order the restoration thereof.

Assuming that the Wall Street Annex Ferry constituted a part of the railroad and that the company had a valid franchise therefor, the company might be within its rights in discontinuing the line. It has been held that a railroad company which has a valid franchise may discontinue a portion of its line which entails great expense without adequate return as long as it still operates a line which substantially accommodates the people of the State.

People v. R. W. & O. R. R. Co., 103 N. Y., 95.  
People ex rel. Linton v. Brooklyn Heights R. R. Co., 69 App. Div., 549.

The Wall Street Annex Ferry concededly did not pay, and the claim is made that the people are substantially accommodated by the Thirty-Fourth Street Ferry, which is still operated by the railroad company, and there is some evidence to indicate that this is true.

For the reasons stated, I am of the opinion that there are no grounds upon which the Commission can order the restoration of the ferry.

Respectfully yours,  
(Signed) GÉO. S. COLEMAN,  
*Counsel to the Commission.*

\*[The Company is under no obligation to maintain a ferry service for which it has never received a franchise.]

\* See footnote, page 9.

OPINION OF COMMISSION.  
(Adopted November 20, 1908).

COMMISSIONER BASSETT:—

This is a complaint made pursuant to section 48, subd. 2 of the Public Service Commissions Act. The complainant alleged that the Long Island Railroad Company threatened to discontinue its ferry service between Long Island City and Pier No. 8, East River.

Section 48, subd. 2, of the Public Service Commissions Law provides that upon complaint in writing setting forth "any act or thing done or omitted to be done" in violation of any provision of law or of the terms and conditions of the company's franchise or charter, the Commission may proceed as set forth in that section "and take such action within its powers as the facts justify." The language used indicates that no power is granted to make an order in a case of threatened violation of law or of the terms and conditions of the company's franchise or charter, but only in a case where a violation has actually occurred. However, in this connection I would call attention to section 57 of the Public Service Commissions Law under which the Commission could proceed in case of a threatened violation of law. This section is in part as follows:

"Whenever either commission shall be of opinion that a common carrier, railroad corporation or street railroad corporation subject to its supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the commission, it shall direct counsel to the commission to commence an action or proceeding in the supreme court of the state of New York in the name of the commission for the purpose of having such violation or threatened violation stopped and prevented either by mandamus or injunction."

Since the hearings upon this complaint the ferry service has been discontinued, but such discontinuance does not, in my opinion, constitute a violation of any provision of law or of the terms and conditions of the charter or franchise of the Long Island Railroad Company.

The original charter of the Long Island Railroad Company does not require or in any way mention the use by the company of ferry boats between the terminus of its railroad, Hunter's Point, and the city of New York, although section 22 of the charter authorizes the company to "purchase or employ one or more steam boats for the conveyance of passengers and goods between the eastern termination of said railroad and any other railroad incorporated by the legislatures of Connecticut or Rhode Island. However, on April 18th, 1859, an act was passed entitled, "An act supplementary to the charter of the Long Island Railroad Company," section 5 of which is claimed to authorize the use of ferry boats between Hunter's Point and New York city, and hence to authorize the use of such boats upon the line in question.

This section is as follows:

"The said Long Island Railroad Company may also purchase or employ one or more steam boats or lighters for the conveyance of their passengers and freight between the steam terminus of their road at Hunter's Point and the city of New York; provided that the same shall in no manner interfere with the rights of the mayor, aldermen and commonalty of the city of New York." (L. 1859, ch. 444, sec. 5.)

It is not entirely clear whether the legislature intended to authorize the company to operate a ferry or whether it intended merely to give the company power to purchase or hire boats, so that such action by the company could not be claimed to be *ultra vires*.

The decision of the United States Supreme Court in December, 1858, that the purchase by a railroad company of a steamboat to run in connection with the

railroad where no power to make such purchase had been granted by the legislature, was *ultra vires*, may have accounted for the enactment of this section.

Whatever may be the proper construction of this section, there would seem to be no question that under section 54 of the Railroad Law the company is given full power to purchase and hire boats and to operate the same, as a ferry over the route in question provided it can procure the necessary franchise rights from the city of New York.

This section is as follows:

"Any steam railroad corporation incorporated under the laws of this state, with a terminus in the harbor of New York, may purchase or lease boats propelled by steam or otherwise, and operate the same as a ferry or otherwise, over the waters of the harbor of New York, but this section shall not be construed to affect the rights of the cities of New York and Brooklyn."

By the Montgomerie Charter of 1730 full power is granted to the mayor, aldermen and commonalty of the city of New York to control all ferries that may be established between Manhattan Island and Nassau Island (now Long Island) and it is provided that no one without the consent, grant or license of said city shall have any control over the ferries or possess any power in regard to them.

Montgomerie Charter, sections 15, 37.

These powers over ferries have been continued and strengthened in subsequent charters.

Section 71 of the present charter is as follows:

"The rights of the city in and to its water front, ferries, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places are hereby declared to be inalienable."

Section 826 of this charter provides that the board of docks shall have the power to lease the franchise of any ferry or ferries belonging to the city and also to lease along with such franchise the wharf property, including wharves, piers, bulkheads and structures thereon and slips, docks, and water fronts adjacent thereto, used or required for the purposes thereof; all leases to be subject to the approval of the commissioners of the sinking fund.

The Bureau of Franchises of the Commission made a report concerning this matter which indicates that the company has no franchise for the operation of this line, as the dock department of the city of New York has stated that the company has no arrangement with the city whatever in regard to this service. The Bureau reports that "The Long Island Railroad Company is enabled to land its passengers at Pier 8 through an arrangement with the lessee of this pier, an arrangement similar in kind to that which any excursion boat might make. The old Pine Street Ferry franchise expired January 1, 1906, and was not renewed. The present annex service was substituted for the Pine Street Ferry service."

This case is, therefore, clearly distinguishable from the ordinary case where a railroad company seeks to abandon operation over a portion of its route for which it has received a franchise, constructed a road and operated for a time. It may be true that in the latter case the railroad company may not discontinue operation without express authorization of law for the abandonment of a part of such route; but this must be so because the railroad company has accepted a special franchise, its obligation to operate being implied from the acceptance of the franchise, which imposes on the company the reciprocal obligation of rendering the service to enable it to perform which the franchise was given, but the statutes before mentioned conferred no special franchise on the Long Island Railroad Company and it has not since obtained a franchise from the city of New York. The use of the East river for purposes of navigation requires no special franchise, and a grant by the legislature of power to a railroad company so to use the East river was a mere extension of the corporate powers of such company and not the grant of a special franchise.

For these reasons I conclude that the abandonment of this ferry line does not constitute a violation of law or of the charter of the company, and since the company never obtained a municipal franchise, such abandonment is not in violation of the terms and conditions of such franchise.

I therefore recommend that the complaint be dismissed.

Thereupon the following dismissal order was issued:

<b>LOUIS WINDMULLER,</b> <i>Complainant,</i> against <b>LONG ISLAND RAILROAD COMPANY,</b> <i>Defendant.</i>	<b>DISMISSAL ORDER</b> No. 841. November 20, 1908.
"Proposed discontinuance of annex boat plying between Long Island City and Pier 8, East River."	

An order of the Commission, No. 701, having been made herein on the 28th day of August, 1908, directing a hearing on September 11, 1908, in the matter of the proposed discontinuance of the annex boat plying between Long Island City and Pier 8, East river, and it appearing that the matters complained of are not in violation of any provision of law or of the terms and conditions of a franchise or charter of the said company, it is

*Ordered*, That said complaint be, and the same hereby is, dismissed, and that this order be filed in the office of the Commission.

## RATES, FARES AND CHARGES.

### COMMUTATION RATES.

\*[The provisions of the Public Service Commissions Law do not require a discontinuance of reduced commutation rates to school children.]

The Staten Island Rapid Transit Railway Company proposed to discontinue the reduced monthly rate of two dollars for school children.

The Chairman, on behalf of the Commission, sent the following letters to that company stating its construction of the law: December 8, 1908.

*The Staten Island Rapid Transit Ry. Co., 17 State St., New York City:*

DEAR SIRS:—The attention of this Commission is called to the fact that in your tariff P. S. C. 1, N. Y.—No. 6, effective January 1, 1909, you have omitted therefrom the monthly school rate of \$2 heretofore shown on your tariff. The Commission notices by newspaper statements that the reason this reduced rate for school children has been eliminated arises from a recent ruling by the Interstate Commerce Commission that special rates for school children are preferential and objectionable.

As has been indicated by the Public Service Commission for the Second District in an opinion upon this subject, the provision of these commutation tickets confined to the use of school children dates so far back in the past that its origin is practically unknown, and in the opinion of the Commission their continued use is extremely desirable to public interest. (See "Reduced Transportation Rates to School Children" dated October 28, 1907, P. S. C. 2, N. Y.) In so far as transportation of school children by your road within this state is concerned, you are advised that your proposed discontinuance of these reduced rates is not demanded by any construction of law by this Commission, which has sole jurisdiction of such transportation.

Your prompt attention is requested in this matter, with the suggestion that an immediate application be made to the Commission for leave to put into effect a tariff on less than thirty days' notice, continuing the school rate heretofore in existence.

Very truly yours,  
 (Signed) WILLIAM R. WILLCOX,  
*Chairman.*

\* See footnote, page 9.

**DEMURRAGE.**

\*[The Public Service Commission does not have jurisdiction over demurrage charges on shipments from without the State.]

The Hay and Grain Dealers Association and F. M. Turnbull Company presented a complaint against the Lehigh Valley Railroad Company regarding demurrage charges on grain and delays in delivery of cars. The complaint was referred to the counsel to the Commission, who rendered an opinion that the Commission did not have jurisdiction, as follows:

**OPINION OF COUNSEL.**

\*[Commission has no jurisdiction of complaints as to excessive storage charges or demurrage at New York terminals on shipments from without the State — Interstate Commerce Act.]

February 14, 1908.

**Hon. EDWARD M. BASSETT, Commissioner:**

SIR:— I beg to submit herewith my report in the matter of the petition of Hay and Grain Dealers Association and F. M. Turnbull Company against the Lehigh Valley Railroad Company regarding excessive demurrage charges and alleged irregularities in the forwarding of cars. This report is furnished in accordance with your communication of January 9, 1908, stating that Mr. Blackmar was to report in regard to the matter but that no report had been made.

**STATEMENT.**

The petitioners above named complain that the Lehigh Valley Railroad Company imposes upon them certain demurrage and track storage charges upon shipments of grain arriving by rail at New York city, which are alleged to be in fact a penalty, and to be unlawful, unjust, oppressive and unreasonable in amount. They also complain that the defendant is not prompt in the delivery of cars consigned to them but collects them on sidings and holds them until there is a sufficient number to make up grain trains, after which these cars are all delivered at once, to the great damage and loss of the petitioners. The petition sets forth at length the schedule of rates charged by the company for demurrage or "track storage" charges which are claimed to be excessive, and also cites specific instances of shipments made from Chicago to the petitioners which are alleged to have been unreasonably delayed in transit.

The petitioners ask that the Commission take action in the matter and that the Commission afford relief in the particulars following.

(1) That said Lehigh Valley Railroad Company be forbidden and enjoined from imposing such charges for track storage, and that such charges be declared to be unlawful.

(2) That proper regulations be made to compel said Lehigh Valley Railroad Company to deliver cars regularly and within a reasonable time from the date of shipment.

(3) That said Lehigh Valley Railroad Company be directed to return and repay charges for track storage paid by said F. M. Turnbull Company under protest.

**OPINION.**

As the matters of which the petitioners complain arise in connection with shipments from without the State of New York, there is presented the question as to whether this Commission has jurisdiction thereof or any power to grant the relief asked.

The provisions of the Public Service Commissions Law relating to railroads, street railroads and common carriers and the powers of the Commission in regard thereto are contained in articles II and III of that law. Section 25 of article II (which is the first section of that article) defines the application of the article as follows:

"The provisions of this article shall apply to the transportation of passengers, freight or property from one point to another *within the State of New York*, and to any common carrier performing such service."

Section 26 of the same article prescribing the facilities to be provided by common carriers and the charges to be made and demanded by them and prohibiting excessive charges, is as follows:

"Every corporation, person or common carrier performing a service designated in the preceding section, shall furnish with respect thereto such service and facilities as may be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such corporation, person, or common carrier for the transportation of passengers, freight, or property or for any service rendered or to be rendered in connection therewith as defined in section two of this act, shall be just and reasonable and not more than allowed by law, or by order of the commission having jurisdiction and made as authorized by this act. Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers, freight, or property or in connection therewith or in excess of that allowed by law or by order of the Commission is prohibited."

\* See footnote, page 9.

Section 49 of article III of the act, which gives the Commission power to fix rates, fares and charges, is as follows:

"Whenever the commission shall be of opinion after a hearing upon a complaint made as provided in this act that the rates, fares, or charges demanded, exacted, charged, or collected by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction for the transportation of persons, freight, or property *within the state*, or that the regulations or practices of such common carrier railroad corporation or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rates, fares and charges to be thereafter observed."

From an inspection of the sections quoted it will be seen that the Legislature has confined the operation of the statute to intra-state *transportation* and refers to section 2 of the act for a definition of the word transportation, and it becomes important to ascertain whether the term as there defined includes either expressly or by fair implication the matter of demurrage. Turning to section 2 of the act we find the term "transportation of property or freight" defined to include any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, *storage*, and handling of the property or freight transported.

While in this definition the word "demurrage" is not expressly mentioned, yet the word "storage" is mentioned and if the matter of *storage* is intended to be included in the term "*transportation*," then clearly, *a fortiori*, the matter of demurrage would be included, as demurrage is a charge imposed for delay in removing goods from the cars before the goods are taken from the cars, and "storage" is ordinarily a charge imposed for the use of depot or warehouse *after* the goods are taken from the cars. Further, the demurrage charge is often regarded as a species of storage charge, as will be seen later, and it is mentioned in the petition as a "track-storage" charge, and it may well be that the Legislature intended that "storage" should include "demurrage." The Legislature, then, in declaring that the provisions of the act should apply to intra-state transportation, intended that the matter of demurrage should be included. It is true that the act does not expressly declare that its provisions shall not apply to such charges imposed upon shipments originating in another state and terminating in the State of New York, but such application of the statute is excluded by the familiar rule of construction "*expressio unius est exclusio alterius*."

That it was not the intent of the Legislature in enacting the Public Service Commissions Law to attempt to confer upon the Public Service Commission any power to act affirmatively in a case of the kind presented here is further seen by a reference to section 60 of that law, whereby it is provided that the Commission may investigate freight rates on interstate traffic on railroads *within the state* with a view to bringing the facts to the attention of the Interstate Commerce Commission.

It is worthy of note, moreover, that the jurisdiction of the Commission of the First District is confined as to lines lying partly within said district and partly without it, to matters concerning construction, maintenance, equipment, terminal facilities, local transportation facilities, and local transportation of persons or property within that district.

Pub. Serv. Com. Law, sec. 5, subd. 3.

The jurisdiction of the Commission for the First District being thus restricted, there might be some question as to the jurisdiction of this Commission over matters of demurrage charges on shipments originating in the Second District of the State of New York and terminating within the First District. The decision of this point is not necessary, however, as the shipments mentioned in the complaint were all interstate shipments and the jurisdiction of the Commission is excluded by the very language of the act.

However, even if the jurisdiction of the Commission were not thus restricted by the language of the act and if the Legislature had in terms attempted to give the Commission jurisdiction over demurrage charges on shipments from without the State, the statute would have been in conflict with the Constitution and laws of the United States. By section 8, subdivision 3, of the Constitution of the United States, Congress is given power to regulate commerce among the several states, and this grant of power to regulate commerce has been construed by the United States Supreme Court to be as a rule an exclusive grant and to exclude any legislation by the separate states upon matters of interstate commerce, and this whether Congress has taken any action or not.

Welton v. Missouri, 91 U. S. 275.

Covington Bridge Co. v. Kentucky, 154 U. S. 205.

It is true that an exception is made in some cases where the State legislation refers to matters local in their operation or intended to be mere aids to commerce, or affecting interstate commerce only incidentally. In such cases it has been held that State legislation is not forbidden until action has been taken by Congress.

Smith v. Alabama, 124 U. S. 465.

Ouachita & M. R. Packet Co. v. Aiken, 121 U. S. 444.

Morgan Steamship Co. v. Louisiana, 118 U. S. 455.

While the line of distinction between matters over which Congress has exclusive jurisdiction and those in regard to which the States may legislate pending Congressional action is rather dim, it might be argued with some force that the matters of which the petitioners complain (particularly the matter of demurrage charges) belong to the latter class. But if it be conceded that they do belong to this class, and that in the absence of Congressional action the States might legislate in regard thereto, we are confronted by the fact that Congress has legislated in regard to such matters so far as interstate shipments are concerned. An examination of the National Act to regulate commerce reveals the fact that Congress has provided for the jurisdiction of the Interstate Commerce Commission over all interstate transportation, and that the term transportation (as defined in the act) comprehends by fair implication, if not expressly, the matter of demurrage.

By section 1 of the act to regulate commerce it is provided:

"That the provisions of this Act shall apply to any corporation or any person or persons engaged in the *transportation* of oil or other commodity — who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the *transportation* of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States; or the District of Columbia."

Section 6 of the same act provides as follows:

"That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares and charges for *transportation* between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rule or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. *The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.*"

The act provides for the appointment of the Interstate Commerce Commission, and section 15 of the act provides that

"The Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made — it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed, and to make an order that the carrier shall cease and desist from such violation to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed."

Congress thus declares that the provisions of the act shall apply to interstate transportation as defined in the act. It is, then, important to ascertain the meaning of the word "transportation" as defined in the act, and whether the definition is sufficiently broad to include demurrage charges. Turning to section 1 of the act we find the word "transportation" defined to "include cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of any contract express or implied for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported."

It thus appears that the intent is that the term "transportation" shall include storage and even the handling of the property transported and, if the

definition is sufficiently broad to include such matters as these, which usually pertain to a time subsequent to the unloading of the cars, then certainly the matter of demurrage would be included as that pertains to a time prior to the unloading of the cars.

Further, as previously noted, the term "storage" may be well taken to cover "demurrage," as demurrage is in the nature of a "track storage" charge. The intent of Congress that the Interstate Commerce Commission should have exclusive jurisdiction over interstate transportation and that the jurisdiction of the states should be excluded is evidenced by the further declaration in the first section of the act, as follows:

"The provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory."

This is equivalent to declaring that the provisions of the act should apply to every other case. The declaration was not necessary, as the result would have been the same without it, but is interesting as a declaration by Congress of its own intent in the matter.

An examination of some of the cases that have been decided by the Interstate Commerce Commission shows that the jurisdiction of the Interstate Commerce Commission over matters of storage and demurrage, in connection with interstate shipments, has never been questioned.

In the cases of *T. M. Kehoe & Co. vs. Western Carolina Railway Company* and other railway companies, complaint was made that a demurrage charge of \$1.00 a day upon certain interstate shipments was excessive. The Commission held, however, that such charges were not excessive, and dismissed the complaints. There is no discussion of the matter of jurisdiction, and it would appear that no question as to the jurisdiction was raised upon the hearing, although all the railroad companies (four) were represented by counsel at the hearing.

*T. M. Kehoe & Co. v. Western Carolina Ry. Co.*, 11 Int. Com. Rep. 166.

In *Blackman v. The Southern Railway Company*, and *Blackman v. The Columbia, Newberry & Laurens Railroad Company*, 10 Interstate Commerce Reports, 352, the complainant complained of alleged excessive charges for depot storage on certain goods shipped by him to Macon, Georgia, and to Columbia, South Carolina. It appeared that the consignee had refused to accept the goods, and that storage charges accumulated against the consignor. The Commission found that both of the defendant railroads were members of the Southeastern Car Service Association formed for the purpose of controlling charges for storage. That this association had issued a circular fixing storage charges. That the storage regulations in effect on the lines of the Southern and of the Columbia, Newberry and Laurens Railroad Company in Georgia and South Carolina were enforced by the adoption by these carriers of the rates and regulations prescribed by the railroad commissioners of these states. That the defendant, the Southern Railway Company, had published through the Southeastern Car Service Association and had filed with the Interstate Commerce Commission the rates and regulations for storage prescribed by the Georgia Railroad Commission and adopted by the defendant in its practice. That the defendant, the Columbia, Newberry and Laurens Railroad Company did not publish through the Southeastern Car Service Association nor file with the Interstate Commerce Commission the rates and regulations for storage charges, which, as to Columbia, S. C., the destination involved in this proceeding, were those prescribed by the South Carolina Railroad Commission. The rates were the same in both of these states.

The Commission held that the rate enforced in the two instances was not unreasonable and not violative of the act to regulate commerce. But held further that the defendant, the Columbia, Newberry and Laurens Railroad Company must publish its rates and regulations as to depot storage and that unless this was done within a reasonable time the company would be proceeded against with a view to the enforcement of this requirement.

This case was decided in 1904. While there is nothing said in regard to the conflicting jurisdiction of state and nation in matters of this kind, yet it is significant that the jurisdiction of the Commission does not seem to have been questioned.

In *American Warehousemen's Association v. Illinois Central Railroad Company et al.*, decided by the Interstate Commerce Commission in 1898, a complaint was made against a large number of carriers to the effect that said carriers unjustly discriminated between shippers and consignees of freight and otherwise violated the regulating statute, as follows:

By affording free storage of freights in various ways for some shippers but not for others.

By failing to collect demurrage charges on cars detained by favored shippers or consignees, and exacting such charges from other shippers or consignees.

By storing only for some concerns large quantities of freight consigned to shipper's order at destination and making delivery thereof in small lots to persons designated by the shipper, or forwarding such smaller lots over its own or other lines to various points under direction of the shipper.

By also assuming expenses of unloading, loading, and cartage for some persons and not for others.

By granting such privileges in violation of rules and regulations established by themselves, and under which shipments were to be billed out on the day received, removed from freight houses by consignees within twenty-four or forty-eight hours or other fixed period, and loaded in and unloaded from cars on tracks or sidings within like specified time, under penalty of storage charges in the one case or car demurrage charges in the other.

By failing and neglecting to include in their published and filed rates schedules the above stated privileges of free storage, free car service, free delivery of stored freight upon shipper's order to different consignees or forwarding of special lots of freight from quantities stored, as rules or regulations charging, affecting or determining aggregate transportation charges or some part thereof.

Upon this complaint and the answers of the several railroad companies thereto, hearings were had by the Commission at Cincinnati, Louisville, St. Louis, Kansas City, Chicago, Detroit, Cleveland, Buffalo, New York, Philadelphia, and Washington, and the matter was gone over very thoroughly. While there is nothing in the case bearing upon the question as to whether demurrage charges in connection with an interstate shipment constitute a part of the Interstate transaction, or are separate and distinct therefrom so as to be subject to state regulation, yet it is significant that although there were several answers interposed, the jurisdictional question does not seem to have been raised in any of them, and the question is not discussed in the opinion. Indeed, it seems to have been tacitly conceded on all sides that the matters mentioned, including demurrage, were proper subjects of regulation by the Interstate Commerce Commission, and the hearings were conducted throughout on that theory; and this though the inquiry extended to matters of storage in depots and warehouses after being unloaded from the cars. The decision expressly holds that storage is, within the contemplation of the act, an incident of transportation and may be dealt with as such. It is well to note that at the time of this decision the term "transportation" as defined in the act was much less sweeping than at present, and the term "storage" was not included in the definition.

The Commission says:

"This investigation has covered a wide area embracing a majority of the principal carriers subject to our jurisdiction, and from the facts developed we are convinced that carriers are very generally extending these privileges of storage to particular shippers without any mention of them upon their published tariffs. It also seems clear that in such a situation the Commission may, by a general order, require carriers to state in their tariffs what free storage is granted and the terms and conditions under which it will be granted.—We have concluded therefore not to make any "order in this case as such, but from consideration of the facts developed upon this hearing, to make a general order of the sort above indicated and such an order will be prepared and issued."

American Warehousemen's Association vs. Illinois Central R. R. Co. et al. 7 Interstate Commerce Reports 556.

Pennsylvania Millers' State Association v. Philadelphia and Reading Railway Company et al. 8 Interstate Commerce Reports, 531, was a case involving the reasonableness of certain regulations concerning demurrage. No question was raised by the defendants as to the jurisdiction of the Interstate Commerce Commission over such matters. In this case demurrage is treated as a variety of storage charge.

From the foregoing it will be seen that Congress has legislated in regard to all matters of which the petitioners complain, and has provided that the jurisdiction of the Interstate Commerce Commission shall extend to all such matters and, in order that there be no mistake as to the jurisdiction of the states, has provided, in effect, that their jurisdiction is confined to transportation and incidental services wholly within one state. That this is the view adopted by the Legislature of New York state has already been shown.

It seems clear without argument that the irregularities and delays in the forwarding of cars of which the petitioners complain were connected with interstate transportation and that the State Commission has no jurisdiction thereof.

It follows that the Public Service Commission for the First District, state of New York, has no jurisdiction of the matters mentioned in the petition, but the petitioners should file their petition with the Interstate Commerce Commission of the United States.

Respectfully yours,

(Signed) GEO. S. COLEMAN,

*Counsel to the Commission.*

The complainants then withdrew their first complaint and presented a new complaint in the same matter, which was referred to the counsel who rendered the following opinion:

#### OPINION OF COUNSEL.

\*[Interstate commerce—shipment from western New York to New York city via Pennsylvania and New Jersey is an interstate shipment.—Demurrage and track storage charges made wholly in the First District on such interstate freight, even

\* See footnote, page 9.

after payment of charges and surrender of bill of lading affect interstate commerce and are not within the jurisdiction of this Commission].

May 2, 1908.

*Public Service Commission for the First District:*

Sirs—I am in receipt of a letter from the Secretary, dated April 13, 1908, transmitting copy of communication of Edward M. Grout and Paul Grout in regard to the matter of the complaint of Hay and Grain Dealers' Association and F. M. Turnbull Company against the Lehigh Valley Railroad Company, and also transmitting a new complaint in said matter and stating that the first complaint has been withdrawn.

The first complaint in this matter contained allegations as to (1) excessive demurrage or track storage charges imposed at New York city on shipments made from Chicago to the complainant in New York city, and (2) irregularities in forwarding of cars in which said shipments were made.

Under date of February 14, 1908, I wrote you that in my opinion the Commission had no jurisdiction of the matters mentioned in said complaint for the reason that the alleged irregularities and excessive charges were matters affecting Interstate Commerce and were proper matters for the regulation and control of the Interstate Commerce Commission under the provisions of the National Act to regulate commerce. The complainants concede the correctness of this position upon the statement of facts as set forth in said complaint, but state that an elimination of all allegations as to irregularities in the forwarding of cars, and a more complete statement with reference to the allegations as to excessive demurrage or track storage charges, may lead to a different conclusion. Accordingly, they have filed a new complaint, omitting the allegations as to irregularities in the forwarding of cars, and confining their complaint to the demurrage or track storage charges, and making their statement of facts in regard to these charges more complete than in the first complaint. In this last complaint it is stated that the track storage charges complained of "are levied by said company solely for storage or use of tracks within the State of New York and within the First District, as defined in section 3 of the Public Service Commissions Law, chapter 429 of the Laws of 1907, and generally after the bill of lading has been surrendered by the consignee to said company and all responsibility of said company for the goods thereunder terminated, and after all its charges for freight have been paid; and said charges are not a charge for, or in any way connected with any transportation, without the State of New York, but are purely local charges." In the communication of the complainants, above referred to, it is stated that "these charges are imposed for the storage of cars containing certain products which are shipped directly from the western part of New York State, such as hay grown within New York State."

I fail to see that a different case is made from the one first presented. If a shipment is an interstate shipment, it does not seem to me material whether the surrender of the bill of lading or the payment of the freight charges precedes the imposition of the track storage charge or not; the charge is equally a part of the cost of an interstate transaction and, for the reasons given in the prior opinion, is not subject to the regulation of this Commission. As pointed out in the former opinion, under the Public Service Commissions Law the jurisdiction of this Commission extends only to transportation from one point to another within the State of New York and to any common carrier performing such service, and does not extend in any way to interstate commerce.

Public Service Commissions Law,	25.
Public Service Commissions Law,	26.
Public Service Commissions Law,	49.
Public Service Commissions Law,	86.

The Lehigh Valley Railroad runs from western New York across Pennsylvania and New Jersey to New York city. Any shipment to New York city by way of this line would therefore be an interstate shipment, and any charge imposed upon such shipment would be imposed upon an interstate shipment. The complainants seem to assume that a shipment from one point in New York State across Pennsylvania and New Jersey to another point in New York State would be an intra-state shipment and would be subject to the jurisdiction of this Commission, but such is not the fact.

Kansas City Southern Ry. Co. vs. Board of Railroad Commissioners of Arkansas, 106 Fed. Rep. 353.  
(Affirmed sub. nom. Hanley vs. Kansas City Southern Ry. Co.)  
187 U. S. 617.

In the case cited goods were shipped by way of the plaintiff's road from one point in Arkansas through a section of Indian Territory to another point in Arkansas. The railroad company charged somewhat in excess of the rate fixed by the Railroad Commissioners of Arkansas, and was summoned before them under the state law. The Commissioners decided that the company was liable to a penalty under the state statute and asserted their right to fix rates for continuous transportation between two points in Arkansas even when a large part of

the route was outside of the state, and announced their intention to enforce compliance with these rates. A bill in equity was brought in the Circuit Court by the Railway Company against the Railroad Commissioners seeking an injunction against their fixing and enforcing these rates. The bill was demurred to for want of equity, the demurser was overruled, and a decree was entered for the plaintiff. The case was appealed to the United States Supreme Court and this court held that the shipment mentioned was an interstate shipment and that the decree of the Circuit Court should be affirmed.

For the reasons stated, I am of the opinion that the matters presented do not come within the jurisdiction of this Commission.

Respectfully yours,  
(Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

No formal ruling was made by the Commission on the subject of jurisdiction, as the complainants after the rendering of a second opinion of counsel, stated that they preferred not to have an order made for a hearing on their petition, being convinced that they should in the first instance file their complaint with the Interstate Commerce Commission as advised by the counsel to the Commission.

#### JOINT RATES.

\*[The Commission has power to determine the just and reasonable rates to be charged by any one railroad operating to Coney Island and also to require any two or more railroads whose lines form a continuous route to establish a through rate to Coney Island within a time specified.

A complaint is a necessary preliminary.]

A bill was introduced at the Assembly prohibiting certain railroad companies from charging more than five cents, the purpose of the bill being claimed to be to require a five-cent fare to Coney Island. The bill was referred to the Assembly Committee on Railroads and the chairman of that committee asked the Commission whether the purpose of the legislative action proposed by this bill is within the power of the Commission and for any views which the Commission may desire to express upon the wisdom or justice of the proposed measure.

The Secretary to the Commission transmitted the opinion of the counsel that the Commission is given sufficient power to do, after a hearing, all the proposed bill can accomplish, and possibly more, and later the Chairman of the Commission sent the following:

February 4, 1908.

*Hon. J. MAYHEW WAINWRIGHT, Chairman of the Committee on Railroads, Assembly Chamber, Albany, New York:*

Sir — Referring to your inquiry of the Commission with regard to the bill of Assemblyman Wagner (No. 39), and the reply transmitted by the Secretary on January 30 last, and the conversation at this office yesterday, I beg to state somewhat more fully the views of the Commission on the subject of railroad rate regulation.

Since the passage of the Public Service Commissions Law and the appointment of the Commission on July 1 last, the Commission has had power, under section 49 of the act, after a hearing upon a complaint in writing (section 48) made by some person aggrieved that rates charged by a railroad or a street railroad for the transportation of persons within the State are unjust, unreasonable or in violation of law, to determine the just and reasonable rates to be thereafter in force as the maximum to be charged for the service to be performed, and fix the same by order. The same section later on contains the following provision:

"The Commission shall have power, by order, to require any two or more common carriers or railroad corporations, whose lines, owned, operated, controlled or leased, form a continuous line of transportation or could be made to do so by the construction and maintenance of switch connection, to establish through routes

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\* See footnote, page 9.

and joint rates, fares and charges for the transportation of passengers, freight and property within the State as the Commission may, by its order, designate; and in case such through routes and joint rates be not established by the common carriers or railroad corporations named in any such order within the time therein specified, the Commission shall establish just and reasonable rates, fares and charges to be charged for such through transportation, and declare the portion thereof to which each common carrier or railroad corporation affected thereby shall be entitled and the manner in which the same shall be paid and secured."

Under this section the Commission has power to determine the just and reasonable rate to be charged by any one railroad operating to Coney Island, and also to require any two or more railroads whose lines form a continuous route to establish a through rate to Coney Island within a time specified; and if such companies do not do so the Commission may then establish a rate to be charged for through transportation to Coney Island at such amount as may be just and reasonable, and declare the amount to which each carrier shall be entitled.

It is to be noted, however, that a complaint is a necessary preliminary, and that this must be filed by some person aggrieved; that a hearing must be then had on notice to the companies interested, and that the rate established, whether it be five cents or any other amount, must be just and reasonable. A rate that is just and reasonable for one through route is not necessarily so for another through route, and so it is possible that a uniform rate of five cents by all routes cannot be established. A complaint, hearing and order as to each separate route to Coney Island is also necessary before the rate which is just and reasonable upon such route can be determined and established.

The matter is an important one to many, and in order that it may be taken up in an orderly way, as intended by the act in the interest of all, it may be well that a complaint be filed by some person aggrieved by existing rates as to each one of these separate through routes to Coney Island, setting out the name of the company which controls and operates the route; or if more than one company are necessary to make up a continuous route, then the names of every such company and the portion operated by it, the amount charged at present by the controlling company or by the successive companies in the particular route, and the statement that the amount taken by the companies for transportation of passengers through to Coney Island upon that route is unjust and unreasonable, and asking the Commission for such relief as may be proper in the premises.

The Commission has upon its files much information as to operating companies in Greater New York, which has been gathered by the Commission expressly for the public use and reference, and the Secretary of the Commission may be depended upon to furnish if desired any information or assistance in the preparation of the complaints.

Respectfully yours,  
(Signed)

WM. R. WILLCOX,  
*Chairman to the Commission.*

#### REBATES.

\*[The adjustment of a claim in good faith with no attempt to evade the prohibition against discrimination in rates or service is not prohibited by the Public Service Commissions Law.]

The New York Central & Hudson River Railroad Company refused to adjust a claim for the loss of baggage on the ground that it was prohibited from so doing by the Public Service Commissions Law. The persons suffering the loss referred the matter to the Commission and the counsel to the Commission rendered the following opinion in the matter:

#### OPINION OF COUNSEL.

May 6, 1908.

*Public Service Commission for the First District:*

SIRS.—I have the Secretary's letter of April 28th last, transmitting a letter to him from Mr. Joseph M. Schirmer of April 27th last, which is accompanied by

\* See footnote, page 9.

copies of correspondence between Mr. Schirmer and the General Baggage Agent of the New York Central lines.

It appears from the letter before me that Mr. Schirmer checked certain baggage over the New York Central lines to Riverdale; that such baggage was safely transported to Riverdale, but was lost through the burglarizing of that station on the night of March 4th last. Mr. Schirmer has claimed damages from the railroad company, but his claim has been denied on the ground that the carrier at the time of the burglary was acting in the capacity of warehouseman, and having taken due precautions for the safety of the property entrusted to it was not liable for its loss, and further that if it paid this claim it would be guilty of a rebate under the Public Service Commissions Law and subject to a fine.

I do not deem it necessary to express an opinion whether the railroad company is or is not liable to Mr. Schirmer, that being a matter upon which he must seek the advice of his own counsel, but confine myself to the question whether the adjustment of this claim is prohibited by the Public Service Commissions Law. This question has been dealt with by my predecessor, Mr. Blackmar, and his opinion of November 22d last, dealing with the complaint of Spear & Company also covers this case. In the case in which Mr. Blackmar rendered his opinion, Spear & Company shipped certain property by the Adams Express Company, but the property was lost and the express company refused to pay damages in excess of \$50., to which amount it had limited its liability by the terms of the receipt given by it. Mr. Blackmar advised the Commission in that case that while by the recognition of excessive or baseless claims common carriers might find a means to evade the prohibition of discrimination of rates, there was no authorization in the act for the Commission to interfere with a just and bona fide attempt to adjust the liability, and stated:

"Whether the claimants recover in an action at law more than the \$50 offered in settlement I do not attempt to determine, but I think that even if they could not, the excess payment is a matter between the express company and its stockholders and is not subject to regulation by the Commission any more than would be the extent of its employees' compensation or the adjustment of any other amount of liability."

I think Mr. Blackmar's reasoning applies as well to this case, and I should suggest that Mr. Schirmer be advised that without considering the details of his claim this Commission has no objection to any adjustment he may make with the railroad company, provided that it is a bona fide adjustment and not an attempt to evade the prohibition against discrimination in rates or service.

I return herewith the correspondence transmitted with the Secretary's letter.  
Respectfully yours,  
(Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

See page 71.

The Secretary, at the direction of the Commission then notified both the complainant and the railroad company that the Commission had no objection to any adjustment provided that it be bona fide and not an attempt to evade the prohibition against discrimination in rates or service.

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**American Express Company.—Excessive and unreasonable charges upon transportation on crated furniture between points within New York city.**

Complaint Order No. 652.  
Hearing Order No. 681.  
Opinion of Commissioner Eustis.  
Dismissal Order No. 744.

COMPLAINT OF J. W. THORNE  
*against*  
AMERICAN EXPRESS COMPANY.

Complaint Order No. 652 (see form, note 1) issued August 3d.  
Hearing Order No. 681 (see form, note 3) issued August 18th.  
Hearing held August 25th.

**OPINION OF COMMISSION.**  
(Adopted October 2, 1908.)

**COMMISSIONER EUSTIS:**—

Under date of July 22, 1908, one J. W. Thorne filed with the Commission a complaint against the American Express Company alleging excessive charges for transporting crated furniture from one point to another within the city of New York. The Express Company filed an answer and also a formal motion to dismiss, and on the hearing renewed its motion to dismiss. The motion to dismiss was put upon the grounds that

“1. This Commission has no jurisdiction of the subject matter, or power to proceed against the defendant.

“2. That the complaint sets forth no matter which is cognizable by the Commission or about which it is given authority to make any order or finding.”

Upon this motion decision was reserved.

Section 5 of the Public Service Commissions Law which prescribes the extent of the jurisdiction of each Commission, provides in part that the jurisdiction, supervision, powers and duties of the Commission in the First District shall extend under the act:

“To any common carrier operating or doing business exclusively within that district.”

Pub. Serv. Com. Law, § 5, subd. 4.

Express companies fall within the definition of the term “common carriers” as used in the act. The language is:

“The term ‘common carrier,’ when used in this act, includes all railroad corporations, street railroad corporations, express companies, car companies, sleeping car companies, freight companies, freight-line companies, and all persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.”

Pub. Serv. Com. Law, § 2.

This Commission would, therefore, have jurisdiction over any express company operating or doing business exclusively within the First District. As the American Express Company does not operate or do business exclusively within the First District, the question presented is whether this Commission has any jurisdiction over this Company. I find no provision whereby such jurisdiction has been conferred. Indeed, it seems to me that the provisions of section 5 of the Public Service Commissions Law, taken singly and together, have distributed the jurisdiction of the Commissions in clear and comprehensive terms, and that the complaint now presented could be considered and disposed of on the merits by the Commission of the Second District.

The American Express Company takes the position that as it does not operate or do business exclusively within the First District this Commission has no jurisdiction over it. I am of the opinion that this position is well taken and that the complaint should be dismissed.

Thereupon the following dismissal order was issued:

<p style="text-align: center;">J. W. THORNE, <i>against</i> AMERICAN EXPRESS COMPANY, <i>Defendant.</i></p> <p>“Excessive and Unreasonable Charge upon Transportation of Crated Furniture between points within New York City.”</p> <p>After Hearing Order No. 681, dated August 18, 1908.</p>	<p style="text-align: right;"><b>DISMISSAL ORDER</b> No. 744. October 2, 1908.</p>
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This matter coming upon the report of the hearing had herein on the 25th day of August, 1908; and it appearing that said hearing was had by and before the

Commission pursuant to Hearing Order No. 681 issued upon the complaint and answer herein and returnable on said 25th day of August, 1908; and it appearing that said order was duly served upon said American Express Company on the 18th day of August, 1908; and it appearing that said hearing was had by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on said 25th day of August, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and T. B. Harrison, Jr., Esq., attorney, appearing for the American Express Company; and a motion to dismiss the complaint herein on the ground of want of jurisdiction having been filed by said American Express Company, and this motion having been renewed upon the hearing; and it having been made to appear after the proceedings on said hearing that this Commission has no jurisdiction of the matter mentioned, and that the complaint should therefore be dismissed;

Now, therefore, on motion of T. B. Harrison, Jr., Esq., counsel for said American Express Company, it is

*Ordered*, That said complaint be and the same hereby is dismissed for want of jurisdiction, and that this order be filed in the office of the Commission.

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**Brooklyn Heights Railroad Company.— Excessive fare to Flushing.**

Complaint Order No. 207.  
Extension Order No. 223.  
Extension Order No. 244.  
Hearing Order No. 285.  
Opinion of Commissioner Bassett.  
Dismissal Order, Case 285.

**COMPLAINT OF THE FLUSHING ASSOCIATION**

*against*

**BROOKLYN HEIGHTS RAILROAD COMPANY.**

Complaint Order No. 207 (see form, note 1) issued January 17th.  
Extension Order No. 223 (see form, note 2) issued January 28th.  
Extension Order No. 244 (see form, note 2) issued February 7th.  
Hearing Order No. 285 (see form, note 3) issued February 21st.  
Hearing held March 9th.

\*[Ten cent fare to Flushing is not unreasonable, discriminatory or illegal.]

**OPINION OF COMMISSION.**

(Adopted December 11, 1908.)

**COMMISSIONER BASSETT:**—

The complaint is directed against The Brooklyn Heights Railroad Company for charging a second fare of five cents to passengers traveling in either direction between Ridgewood and Flushing. The sole ground of complaint is that the extra fare is illegal and in violation of the terms of the company's charter. But the answer of the company not only denies the allegation of illegality but alleges that the franchises under which the various routes to Flushing are operated expressly authorize a fare of at least ten cents; and also alleges that the ten cent fare is reasonable and that a reduction in fare would involve such a loss to the company as to be confiscatory. It has apparently been the wish of the defendant to try all phases of the question in regard to fares by the defendant's various routes to Flushing, and as the complainant acquiesced in that plan, the hearing proceeded

\* See footnote, page 9.

upon all of the issues raised in defendant's answer notwithstanding the fact that some of those issues were not offered by the complaint.

Three general routes are involved in the proceeding:

(1) The Flushing-Ridgewood line running from Fresh Pond station on the Myrtle avenue line of the Brooklyn Union Elevated Railroad Company to Flushing. At Fresh Pond station transfers are exchanged between the Brooklyn Union Elevated and the Brooklyn Heights Companies. The Brooklyn Union Elevated trains run over the surface to Ridgewood and then by means of an incline to the Myrtle avenue elevated structure and through to Park Row, Manhattan. By transferring to trolley cars at Ridgewood, a passenger may continue his journey free to any part of the Brooklyn Heights system; or by continuing on the elevated trains he may go through to Park Row, Manhattan, or to Jamaica or Canarsie, or to the second fare point on either of the so-called elevated routes to Coney Island. Similarly in the opposite direction a passenger may ride from any point named to Cedar Grove Cemetery on the Flushing line for a single fare.

(2) The Flushing avenue line runs over Brooklyn bridge and out Sands street and Flushing avenue to Maspeth depot, which is situated at the intersection of Grand street and Juniper avenue in the former town of Newtown. Maspeth depot is a short distance east of the intersection of Grand street and Flushing avenue and a slightly greater distance east of the intersection of Flushing avenue and Fresh Pond road, where the Flushing-Ridgewood cars enter Flushing avenue coming from Fresh Pond station. At Maspeth depot free transfers are exchanged between the Flushing-Ridgewood cars and the Flushing avenue cars in each direction.

(3) The Grand street line operates over the Williamsburg bridge through various intervening streets and out Grand street to North Beach. At the intersection of Flushing avenue and Grand street free transfers are exchanged between the Grand street line and the Flushing-Ridgewood line. The portion of the route from the intersection of Flushing avenue and Grand street to the intersection of Union avenue and Junction avenue in Corona is used in common by the Grand street line and the Flushing-Ridgewood line, the right of way being that of the old Grand street line which was merged with the Brooklyn City Railroad Company in 1890. The entire Brooklyn city system was leased to The Brooklyn Heights Railroad Company in 1893.

The distance from Flushing to Fresh Pond station is 5.43 miles. The distance from Fresh Pond station to Park Row is 6.63 miles, making a total distance of 12.06 miles between Flushing and Park Row, Manhattan, by the Flushing-Ridgewood line and the elevated. The surface route from Flushing to Park Row by the Flushing avenue line is also slightly over 12 miles. The distance from Flushing to the Manhattan terminal of the Williamsburg bridge is 10.428 miles.

The railroad company maintains a so-called free zone in order to eliminate the possibility of a passenger being charged ten cents for a short ride. Such a charge might result, in case a single arbitrary point were fixed for the collection of a second fare, if a passenger happened to board a car just before reaching the second fare point and traveled a short distance beyond the point. The method involved in the operation of the free zone is to limit the collection of the second fare to passengers who have boarded the car some distance before reaching the second fare point. Thus in actual practice east bound passengers are charged a second fare on passing Cedar Grove cemetery only in case they have ridden from some point west of Maspeth depot, and west bound passengers are charged a second fare on passing Maspeth depot only in case they have ridden from some point east of Cedar Grove cemetery. The length of the free zone, that is, the distance between Cedar Grove cemetery and Maspeth depot is 4.073 miles. The length of the combined free zone on the Flushing and North Beach lines is 3.158 miles, and this latter figure is the shortest distance for which the ten-cent fare is charged. The ten-cent fare for this distance would apply only in case of a passenger traveling from the northerly portion of the North Beach route to the easterly portion of the Flushing route or vice versa; and, as a matter of fact, owing to the con-

ditions of population in the territory just outside of the free zone on the Flushing line, and the territory just outside of the free zone on the North Beach line, it would be extremely unlikely that a passenger would begin and end his journey in such a manner as to confine it to that particular 3.158 miles. It is admitted by the complainant that the average distance traveled by passengers transferring from the easterly portion of the Flushing line to the northerly portion of the North Beach line, or from the northerly portion of the North Beach line to the easterly portion of the Flushing line is about five miles through a sparsely settled territory.

The outlying portion of the Flushing route runs through the former villages of Corona, Newtown and Maspeth. The testimony shows that about three-quarters of a mile separates the edge of Flushing from the high ground in Corona, and that most of this three-quarters of a mile is marsh lands adjacent to Flushing creek and its tributaries. The more or less loosely built up portions of Corona and Elmhurst are contiguous. About a quarter of a mile separates the settled portions of Elmhurst and Maspeth. For some distance south and west of Maspeth depot on all three routes, namely, Grand street, Flushing avenue and Flushing-Ridgewood routes, the territory is rather loosely built up, but the Flushing-Ridgewood line after transferring to the elevated, and the two surface lines, after crossing the old Brooklyn city boundary at or near Newtown creek, pass through thickly settled territory.

The complainant's claim that the ten-cent fare to Flushing is illegal is based on three grounds:

(1) That if, as defendant contends, the railroad company can and does carry passengers a distance approximating twenty miles for a single fare of five cents, the company ought to carry passengers the twelve miles, or less, from the borough of Brooklyn to Flushing for five cents.

(2) That some passengers passing Cedar Grove cemetery east bound, or passing Maspeth depot west bound, are not charged a second fare, whereas other passengers passing such point are charged a second fare, constitutes an unlawful discrimination against the passengers who are thus taxed a second fare, and that this preference accorded to the single fare passengers constitutes in actual practice a discrimination against the passengers on the line who happen to reside in Flushing. The testimony indicates, and it seems to be conceded by both sides, that the easterly boundary of the free zone at Cedar Grove cemetery is so near Flushing, and is so situated with reference to the extensive marsh lands bordering the Flushing creek, that there are practically no passengers concerned with the second fare charged excepting those who have occasion to use the line as a means of transportation to or from Flushing.

(3) That as the second fare is charged in each case by The Brooklyn Heights Railroad Company as the lessee of the Brooklyn City Railroad Company for a continuous ride within the limits of the city of New York, and as the entire route involved in the second fare charged is a street surface route and as an essential part of the route includes extensions, constructed under chapter 252 of the Laws of 1884, therefore the case is brought within the provisions of section 101 of the Railroad Law requiring a street surface railroad operating wholly within a single municipality to carry a passenger on a continuous ride for a single fare.

Taking up these grounds in order it is to be observed:

(1) That the fact that a passenger may ride twenty miles for a single fare of five cents results from the elaborate system of transfers maintained by the companies, some of which are made mandatory upon a company by the automatic operation of the Railroad Law, and some of which, as for instance the transfer between the Brooklyn Heights Company and the Brooklyn Union Elevated Company at Fresh Pond station, and the transfer between the Brooklyn Union Elevated Company and the Brooklyn, Queens County and Suburban Company at Cypress Hills, are a voluntary arrangement between the distinct though affiliated companies

of the Brooklyn Rapid Transit system. For these transfers, which have been characterized as voluntary, there is no statutory requirement, and no way has been discovered in which they could be enforced in case the companies should discontinue, unless the Public Service Commission should find that a five-cent fare was the reasonable limit for a through route over connecting lines. The fact that various combinations of these compulsory and voluntary transfers make possible a ride of twenty miles for five cents does not constitute by itself a sufficient legal reason why the Flushing-Ridgewood line should be operated to its terminus for five cents.

(2) The fact that some passengers are charged a second fare on passing out of the free zone, while others are not, is a result of the free zone system of operation and does not constitute any unlawful discrimination or preference. The sole purpose of the distinction is to relieve passengers who have traveled a short distance from paying a ten-cent fare. Passengers who traverse the same territory are charged the same fare, and there would seem to be no discrimination unless it be a discrimination to carry passengers the ten miles and over between Park row and Cedar Grove cemetery for five cents and to charge a passenger ten cents for the five miles between the junction of Flushing avenue and Grand street, for instance, and Flushing. All classes of passengers are treated equally under the same conditions, and the fact that the fare in one case constitutes a higher rate per mile than in the other cannot be said to be unlawful because unequal. It is no more an inequality than exists everywhere on the street surface railroads in a city, arising from the fact that some passengers ride but a few blocks, while others ride from one end of the line to the other. It can hardly be said that the exactation of a second fare per se constitutes an unlawful discrimination provided the length of the run justifies the fare; and the operation of a free zone makes possible a closer equality of charges than would be possible if a single second fare point were established.

(3) The Grand street surface line and the Flushing avenue surface line, with their transfers through to Flushing, and the Flushing-Ridgewood line, from Fresh Pond station to Flushing, would probably come within the provision of section 101 of the Railroad Law if it were not for section 1538 of the Charter of The City of New York. In addition to that section, the defendant also relies upon the terms of its franchise from the village of Flushing which granted the right to use the streets of Flushing provided that no more than five cents should be charged within the village and not more than ten cents between the terminal in Flushing and the western termini of the several routes. The defendant claims that this franchise constitutes a contract between the trustees of the village of Flushing and the railroad company which cannot now be impaired. The contention of the complainant seems to be well taken that the trustees of the village of Flushing had no power to contract in regard to rates of fare outside the boundaries of the village, and that the stipulation of a fare not to exceed five cents within the village of Flushing, and a fare not to exceed ten cents in the western end of the line was a mere condition upon which the granting of the franchise hinged and did not constitute a contract authorizing a ten cent fare. However, section 1538 of the Charter of The City of New York stays the operation of section 101 of the Railroad Law. It provides as follows:

"Sec. 1538. This act shall not extend the territorial operation of any rights, contracts or franchises heretofore granted or made by the corporation known as the mayor, aldermen and commonalty of the City of New York, or by any of the municipal and public corporations which by this act are united and consolidated therewith, including the counties of Kings and Richmond, and the same shall be restricted to the limits respectively, to which they would have been confined if this act had not been passed; nor shall this act in any way validate or invalidate, or in any manner affect such grants, but they shall have the same legal validity, force, effect and operation, and no other or greater than if this act had not been passed."

This section of the amended charter of 1901 was a substantial re-enactment of a similar section of the original charter of 1897. At the time of the taking effect of the charter of 1897, The Brooklyn Heights Railroad Company was operating the Flushing-Ridgewood line and the two other lines involved in this proceeding by virtue of various franchises which it held from the town of Newtown, town of Flushing, and the village of Flushing, all of which were municipal corporations outside of the city of Brooklyn. At that time the fare was ten cents.

The evidence shows that the gross earnings of the Grand street line to North Beach for the year 1907 were \$210,976.32, total expenses including taxes, fixed charges and special appropriations for betterments not chargeable to capital \$256,095.77, leaving a deficit for the year of \$45,119.45; in the case of the Flushing avenue line from Park Row, gross earnings of \$182,766.09, total expenses \$225,197.60, leaving a deficit for the year of \$42,431.51; in the case of the Flushing-Ridgewood line from Fresh Pond junction to Flushing, gross earnings were \$114,644.01, total expenses \$168,772.18, leaving a deficit for the year of \$54,128.12. There figures are based on a car mile cost of operation of 18.27 cents for the entire Brooklyn Heights system and a total cost per car mile of 28.57 cents, including operation, taxes and fixed charges.

As stated above, the Brooklyn City Railroad system was leased to The Brooklyn Heights Railroad Company in 1893. The fixed charges last referred to include as the principal part of the rental a 10 per cent dividend on the stock of the Brooklyn City Railroad Company, which leased these three lines and many others to the defendant herein. The portion of rental thus taken for dividends averages 4.95 cents per car mile. The remaining portion of the said rental is made up of interest on funded debt. There is no separate capitalization of these three lines but the average funded debt of the Brooklyn City Railroad Company covering the property leased to The Brooklyn Heights Railroad Company is \$67,017 per mile.

The earnings taken are the cash receipts on the various lines involved in this proceeding. The passenger receipts per car mile average as follows:

On the Flushing-Ridgewood route 19.33 cents.  
On the Grand street route 22.76 cents.  
On the Flushing avenue route 22.57 cents.

The foregoing figures show that the receipts are clearly short of the average cost of operating the road including taxes and fixed charges. Even if the portion of the rental representing dividend be entirely eliminated from the average cost per car mile the remainder would amount to 23.62 cents per car mile, which is still in excess of the average passenger receipts on any of the three lines in question. Inasmuch, therefore, as none of these lines earn enough to pay operating expenses, taxes and interest on such funded debt, it seems to me that the proper conclusion is that these lines are operated at a loss. At the request of the complainant the Commission caused an examination to be made by its engineers of the cost of operating the Flushing avenue, Flushing-Ridgewood and Grand street lines. The report of the engineers shows that the above stated cost of operation is not excessive. The evidence shows an average of eight passengers per car passing Cedar Grove Cemetery in each direction between the hours of 5:30 A. M. and 4:30 P. M., and that in other hours the average is less. There is no special rush hour in either direction.

It may be said that if the extra fare to Flushing were not charged more passengers would ride and this would lessen the operating cost per passenger mile. The answer to this is that the distance to be traversed is so great and the trip to Manhattan by surface car takes so long a time that it is quite uncertain as to how much a reduction of fare would increase the traffic. The same rule will not operate that might be true on rides of moderate length in the thickly populated districts. The evidence shows that the Long Island Railroad station is within a

stone's throw from the terminus of the defendant's line at Flushing and that in the morning rush hours the steam railroad platform is covered with people waiting to go to Manhattan by the steam trains at twenty cents fare, while the defendant's trolley cars start out from the same point not more than one-half filled. It is therefore apparent that one reason why people do not travel more on the defendant's cars is because of the long time consumed in proceeding the twelve miles to the Brooklyn bridge. There is no reason to believe that a reduction of fare would cause such an increase of business as would wipe out the deficit.

I conclude, therefore, that the extra fare to Flushing is neither illegal nor unreasonable, and I recommend that the complaint be dismissed.

Thereupon the following dismissal order was issued:

<b>FLUSHING ASSOCIATION,</b> <i>Complaint,</i> <i>against</i> <b>BROOKLYN HEIGHTS RAILROAD COMPANY,</b> <i>Defendant.</i>	<b>DISMISSAL ORDER</b> CASE 285. December 11, 1908.
"Double fare in the former Village of Flushing."	

An Order of the Commission, No. 285, having been made herein on the 21st day of February, 1908, directing a hearing on March 9, 1908, in the matter of double fare charged by the Brooklyn Heights Railroad Company in the former village of Flushing, and it appearing from testimony taken at said hearing and at hearings held on subsequent dates, on which an opinion was rendered by Commissioner Bassett, that the charge of ten cents is not illegal or unreasonable, and that a reduction is not warranted, it is

*Ordered*, That said complaint be, and the same hereby is, dismissed.

**Brooklyn, Queens County and Suburban Railroad Company,  
Brooklyn Heights Railroad Company.— Excessive fare from  
North Beach to points south of Flushing road junction, Broad-  
way and Union avenue.**

Complaint Order No. 215.  
Extension Order No. 245.  
Hearing Order No. 286.

**COMPLAINT OF FREDERICK ERBE and Others,**

*against*

**BROOKLYN, QUEENS COUNTY AND SUBURBAN  
RAILROAD COMPANY; BROOKLYN HEIGHTS  
RAILROAD COMPANY.**

Complaint Order No. 215 (see form, note 1) issued January 24th.  
Extension Order No. 245 (see form, note 2) issued February 7th.  
Hearing Order No. 286 (see form, note 3) issued February 21st.  
Hearings were held March 9th, 18th, June 17th, 26th, 29th, and July 10th.

**Brooklyn Union Elevated Railroad Company and other railroad companies operating to Coney Island.—Ten-cent fare to Coney Island.**

Complaint Order No. 276.  
Extension Order No. 304.  
Hearing Order No. 353.

**COMPLAINT OF SCOTT MACREYNOLDS  
*against***

**BROOKLYN UNION ELEVATED RAILROAD COMPANY; BROOKLYN HEIGHTS RAILROAD COMPANY; NASSAU ELECTRIC RAILROAD COMPANY; BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY; CONEY ISLAND AND GRAVESEND RAILWAY COMPANY.**

Complaint Order No. 276 (see form, note 1) issued February 21st.  
Extension Order No. 304 (see form, note 2) issued March 3d.  
Hearing Order No. 353 (see form, note 3) issued March 20th.  
Hearings held March 26th, April 9th, 17th, 20th, 23d, 28th, 29th, 30th, May 4th, 6th, 7th, 13th, 20th, 22d and 25th.

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**Brooklyn Union Elevated Railroad Company and other railroad companies operating to Coney Island.—Ten-cent fare to Coney Island.**

Complaint No. 276a.  
Extension Order No. 303.  
Hearing Order No. 351.

**COMPLAINT OF J. MONHEIMER  
*against***

**BROOKLYN UNION ELEVATED RAILROAD COMPANY, BROOKLYN HEIGHTS RAILROAD COMPANY, NASSAU ELECTRIC RAILROAD COMPANY, BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, CONEY ISLAND AND GRAVESEND RAILWAY COMPANY; SOUTH BROOKLYN RAILWAY COMPANY AND SEA BEACH RAILWAY COMPANY.**

Complaint Order No. 276a (see form, note 1) issued February 21st.  
Extension Order No. 303 (see form, note 2) issued March 3d.  
Hearing Order No. 351 (see form, note 3) issued March 20th.  
Hearings held March 26th, April 9th, 17th, 20th, 23d, 28th, 29th, 30th, May 4th, 6th, 7th, 13th, 20th, 22d and 25th.

Coney Island and Brooklyn Railroad Company.— Ten-cent fare to Coney Island.

Complaint Order No. 275a.  
Hearing Order No. 350.

COMPLAINT OF J. MONHEIMER  
*against*

CONEY ISLAND AND BROOKLYN RAILROAD COMPANY.

Complaint Order No. 275a. (see form, note 1) issued February 21st.  
Hearing Order No. 350 (see form, note 3) issued March 20th.  
Hearings were held March 26th, April 3d, 10th, 24th, May 1st, 8th, 14th, 19th, 22d, 27th and June 11th.

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Coney Island and Brooklyn Railroad Company.— Ten-cent fare to Coney Island.

Complaint Order No. 275.  
Extension Order No. 305.  
Hearing Order No. 352.

COMPLAINT OF SCOTT MACREYNOLDS  
*against*

CONEY ISLAND AND BROOKLYN RAILROAD COMPANY.

Complaint Order No. 275 (see form, note 1) issued February 21st.  
Extension Order No. 305 (see form, note 2) issued March 3d.  
Hearing Order No. 352 (see form, note 3) issued March 20th.  
Hearings held March 26th, April 3d, 10th, 24th, May 1st, 8th, 14th, 19th, 22d, 27th and June 11th.

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Long Island Railroad Company.— Excessive rate of fare for monthly commutation tickets; lack of service on Whitestone branch.

COMPLAINT OF LAWRENCE S. FOLGER  
*against*

LONG ISLAND RAILROAD COMPANY.

Complaint Order No. 300 (see form, note 1) issued March 3d.

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Long Island Railroad Company.— Reduction of fare from Flatbush avenue to Railroad avenue from ten cents to five cents.

Complaint Order No. 565.  
Hearing Order No. 636.

COMPLAINT OF THE 26TH WARD BOARD OF TRADE  
*against*

LONG ISLAND RAILROAD COMPANY.

Complaint Order No. 565 (see form, note 1) issued June 9th.  
Hearing Order No. 636 (see form, note 3) issued July 14th.  
Hearing held September 2d, 21st and 30th.

**Long Island Railroad Company.**— Excessive fare on Atlantic avenue line between Jamaica and Flatbush stations.

Case 1022.

**COMPLAINT OF M. H. FISHBURN**

*against*

**LONG ISLAND RAILROAD COMPANY.**

Complaint Order (see form, note 1) issued December 18th.

**Metropolitan Street Railway Company—Central Park, North and East River Railroad Company.**— Establishment of through routes and joint rates.

Hearing Order No. 670.  
Final Order No. 673.  
Order No. 693.  
Hearing Order No. 752.  
Final Order No. 815.  
Rehearing Order No. 821.  
Rehearing Order No. 825.  
Final Order No. 830.

In the Matter  
of the

Hearing on the motion of the Commission as to the Regulations, Practices and Service of ADRIAN H. JOLINE and DOUGLAS ROBINSON, Receivers of the METROPOLITAN STREET RAILWAY COMPANY and of the CENTRAL PARK, NORTH & EAST RIVER RAILROAD COMPANY, in respect to the establishment of certain through routes and joint rates.

HEARING ORDER  
No. 670.  
August 8, 1908.

*It is hereby Ordered,* That a hearing be had on the 11th day of August, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and state of New York, to inquire whether the regulations, practices and service of Adrian H. Joline and Douglas Robinson, receivers of the Metropolitan Street Railway Company and of the Central Park, North and East River Railroad Company, in respect to the transportation of persons in the First District, are unjust, unreasonable, improper or inadequate, and to determine whether changes in the same ought reasonably to be made by the receivers and by the said Central Park, North and East River Railroad Company, in respect to the making of a through route and joint rate by them over any lines owned, operated, controlled or leased by them forming a continuous line of transportation, or which could be made to do so by the construction and maintenance of switch connections, and if so be found to be the fact then to determine whether a change in said regulations, practices and service in the particulars following, at the places therein mentioned, would be just, reasonable, adequate and proper to be put in force, observed and used in the transportation of persons at said places in the First District, namely:

Whether the said Adrian H. Joline and Douglas Robinson, as receivers aforesaid, and the Central Park, North and East River Railroad Company should be required to establish on or before the expiration of five days after the order to be entered in this proceeding, by proper connection between their respective lines of transportation, and maintained in operation for a period of not less than three months from and after said date, a through rate for the transpor-

## 250 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

tion of passengers between the points and upon the lines specified in the attached schedule in each direction, and whether they should be required to establish and put in force a joint rate of fare for each such passenger by the use of a transfer slip, coupon ticket or other sufficient token delivered to such passenger, and apply the said rate of fare to the transportation of passengers over the routes and each of them specified in the said schedule in each direction.

### SCHEDULE.

From any point on the portions of the lines indicated below in class No. 1, thence northward along any one of the said lines to and along the Fifty-ninth street line of the Central Park, North and East River Railroad Company, and thence northward on portions of the lines indicated below in class No. 2; and in the reverse direction.

Class No. 1. The portion of north and south lines operated by the receivers of the Metropolitan Street Railway Company north of Thirtieth street as far as Fifty-ninth street.

Class No. 2. The portions of north and south lines operated by the receivers of the Metropolitan Street Railway Company north of Fifty-ninth street as far as One Hundred and Sixteenth street.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered.* That the said Adrian H. Joline and Douglas Robinson, receivers as aforesaid, and the said Central Park, North and East River Railroad Company, be given at least two days' notice of such hearing, by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said receivers and said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinafter set forth.

Hearing held August 11th.

The following final order was issued.

### FINAL ORDER No. 673.

August 11, 1908.

This matter coming on on the report of the hearing had herein on August 11, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made August 7, 1908, and returnable on August 11, 1908, at 2:30 o'clock in the afternoon, and that said order was duly served upon the said Adrian H. Joline and Douglas Robinson, receivers, and upon the Central Park, North & East River Railroad Company, and that the said service was by the said receivers duly acknowledged, and that the said hearing was held by and before the Commission on August 11, 1908, Commissioners Eustis, Maltbie and McCarroll presiding, Oliver C. Semple, Esq., appearing for the Commission, Henry Thompson and A. H. Vanderpoel appearing for the said Central Park, North and East River Railroad Company, and no one appearing for the said receivers, but a communication being received from the said receivers in the matter, J. Parker Kirlin appearing for stockholders of the Metropolitan Street Railway Company, and proof having been taken, and it being the opinion of the Commission that the lines of said receivers and said Central Park, North & East River Railroad Company, hereinafter specified, owned, operated, controlled or leased, form and have formed for many years continuous lines of transportation, and that operation of said lines as through routes for a single fare by said receivers and said Central Park, North & East River Railroad Company was discontinued on August 6, 1908.

*Now, it is hereby Ordered,*

(1) That the said Adrian H. Joline and Douglas Robinson, as receivers aforesaid, and the Central Park, North and East River Railroad Company be required to establish on or before August 24, 1908, by proper connection between their respective lines of transportation, and maintain in operation for a period of not less than one year from and after the said date, a through route for the transportation of passengers between the points and upon the lines specified in the attached schedule, in each direction, and be required to establish and put in force a joint rate of fare for each such passenger by the use of a transfer slip, coupon ticket or other sufficient token delivered to such passenger, and apply the said rate of fare to the transportation of passengers over the routes, and each of them, specified in the said schedule, in each direction, for and during the time aforesaid, unless modified in accordance with the provisions of the Public Service Commissions Law.

### SCHEDULE.

First. From any point on the portions of the lines indicated below in class No. 1; thence northward along any one of the said lines to and along the Fifty-ninth street line of the Central Park, North & East River Railroad Company, and thence northward to any point on the portions of the lines indicated below in class No. 2; and in the reverse direction.

Second. From any point on the portions of the lines indicated below in class No. 1; thence northward along any one of the said lines to and along the Fifty-ninth street line of the Central Park, North & East River Railroad Company to Tenth avenue.

Third. From any point on the portions of the lines indicated below in Class No. 1; thence northward along any one of the said lines to and along the Fifty-ninth street line of the Central Park, North & East River Railroad Company to First avenue.

Fourth. From any point on the portions of the lines indicated below in Class No. 2; thence southward along any one of the said lines to and along the Fifty-ninth street line of the Central Park, North & East River Railroad Company to Tenth avenue.

Fifth. From any point on the portions of the lines indicated below in Class No. 2; thence southward along any one of the said lines to and along the Fifty-ninth street line of the Central Park, North & East River Railroad Company to First avenue.

Sixth. From any point on the portion of the Central Park, North & East River Railroad Company between Thirty-fourth street and Fifty-ninth street; thence northward along said portion of the line of the said company to Fifty-ninth street; thence to and along the Fifty-ninth street line of said company, and thence northward to any point on the portions of the lines indicated in Class No. 2; and in the reverse direction.

Class No. 1. The portions of north and south lines operated by the receivers of the Metropolitan Street Railway Company north of Thirty-fourth street as far as Fifty-ninth street.

Class No. 2. The portions of north and south lines operated by the receivers of the Metropolitan Street Railway Company north of Fifty-ninth street as far as One Hundred and Sixteenth street.

(2). That this order take effect immediately and continue in force until August 24, 1908, unless otherwise ordered by the Commission.

(3) That the said Adrian H. Joline and Douglas Robinson, as receivers, and the said Central Park, North & East River Railroad Company notify the Public Service Commission for the First District, on or before August 24, 1908, whether the terms of this order are accepted and will be obeyed.

#### ORDER No. 693.

August 25, 1908.

*Resolved*, That the Public Service Commission for the First District investigate on Thursday, August 27, 1908, at 10:30 o'clock in the forenoon, under Order No. 615 of this Commission, what rate, fare or charge is just, and reasonable to be charged by said common carriers for through transportation upon each of the routes named in said Order No. 673 and what portion of such rate, fare or charge should be apportioned to each such carrier and the manner in which the same should be paid or secured.

#### HEARING ORDER No. 752.

September 30, 1908.

The Public Service Commission for the First District having on or about the 7th day of August, 1908, duly made an order (No. 670) for a hearing to inquire whether the regulations, practices and service of Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, and the regulations, practices, and service of the Central Park, North and East River Railroad Company, in respect of the transportation of persons were unjust, unreasonable, improper or inadequate, and to determine whether changes in the same ought reasonably to be made by the receivers and by the said Central Park, North and East River Railroad Company in respect of the making of a through route and joint rate by them over certain lines owned, operated, controlled or leased by them, and after the hearing held in pursuance of such order the said Commission having on or about the 11th day of August, 1908, duly made an Order (No. 673) requiring the said Adrian H. Joline and Douglas Robinson, as receivers aforesaid, and the said Central Park, North and East River Railroad Company to establish on or before August 24, 1908, by proper connection between their respective lines of transportation, and maintain in operation for a period of not less than one year from and after the said date, a through route for the transportation of passengers between the points and upon the lines specified therein, and to establish and put in force a joint rate of fare for each such passenger by the use of a transfer slip, coupon ticket or other sufficient token delivered to such passenger and apply the said rate of fare to the transportation of passengers over the routes mentioned therein for and during the time aforesaid, unless modified in accordance with the provisions of the Public Service Commission Law, and the said Adrian H. Joline and Douglas Robinson, as receivers as aforesaid, and the said Central Park, North and East River Railroad Company having failed to comply with the provisions of the said last mentioned order, and the Commission having on or about the 25th day of August, 1908, adopted a resolution to investigate on the 27th day of August, 1908, what rate, fare or charge is just and reasonable to be charged by the said receivers and by the said Central Park, North and East River Railroad Company, for through transportation upon the routes named in said Order No. 673, and what portion of such rate, fare or charge should be apportioned to said receivers and to the said Central Park, North and East River Railroad Company, and the manner in which the same should be paid or secured, and investigation having been duly had under such resolution,

Now, after such investigation and after all the proceedings heretofore taken it is

*Ordered*, That a hearing be had on the 2d day of October, 1908, at 2:30 o'clock in the afternoon of that day, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City and State of New York, to inquire:

(1) Whether the joint fare for passengers upon the lines specified in the schedule hereto attached to be established and put in force by the Commission should be five cents per passenger; or if such joint fare would be unjust or unreasonable, then what joint fare should be established or put in force.

(2) To what portion of such joint fare should the said receivers and the said railroad company, respectively, be entitled.

(3) In what manner should the respective portions of such joint fare be paid and secured to the receivers and the said railroad company.

*Further Ordered*, That the said Adrian H. Joline and Douglas Robinson, receivers as aforesaid, and the said Central Park, North River and East River Railroad Company, be given at least two days' notice of such hearing, by service upon them, either personally or by mail, of a certified copy of this order, and that said receivers and said company be afforded all reasonable opportunity to present evidence and to examine witnesses as to all the matters involved herein.

Hearings were held October 2d, 7th, 8th, 13th, 14th, 15th, 16th, 17th, 18th, 23d and 24th.

The following final order was issued:

**ORDER No. 815.**

October 30, 1908.

The Public Service Commission for the First District having, on or about the 7th day of August, 1908, duly made an order (No. 670), for a hearing to inquire whether the regulations, practices and service of Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, and the regulations, practices and service of the Central Park, North and East River Railroad Company, in respect of the transportation of persons were unjust, unreasonable, improper or inadequate and to determine whether changes in the same ought reasonably to be made by the receivers and by the said Central Park, North and East River Railroad Company in respect of the making of a through route and joint rate by them over certain lines owned, operated, controlled or leased by them, and after the hearing held in pursuance of such order, the said Commission having on or about the 11th day of August, 1908, duly made an order (No. 673), requiring the said Adrian H. Joline and Douglas Robinson, as receivers, and said Central Park, North and East River Railroad Company to establish on or before August 24, 1908, by proper connection between their respective lines of transportation and maintain in operation for a period of not less than one year from and after the said date, a through route for the transportation of passengers between the points and upon each of the lines hereinafter specified, and to establish and put in force a joint rate of fare for each said passenger by the use of a transfer slip, coupon ticket or other sufficient token delivered to such passenger and apply the said rate of fare to the transportation of passengers over each of the routes hereinafter mentioned for and during the time aforesaid unless modified in accordance with the provisions of the Public Service Commissions Law, and said Adrian H. Joline and Douglas Robinson, as receivers aforesaid, and the said Central Park, North and East River Railroad Company having failed to comply with the provisions of the said last mentioned order and not having established said through routes and joint rate or any thereof, as therein required, and the Commission having thereafter duly made an order (No. 752), that a hearing be had on the 2d day of October, 1908, at 2:30 o'clock in the afternoon of that day, to inquire,

(1) Whether the joint fare for passengers, upon the lines hereinafter specified, to be established and put in force by the Commission should be five cents per passenger or if such joint rate would be unjust or unreasonable, then what joint fare should be established or put in force.

(2) To what portion of such joint fare should the said receivers and the said railroad company respectively, be entitled.

(3) In what manner should the respective portions of such joint fare be paid and secured to the said receivers and the said railroad company; and directing that the said receivers and the said railroad company be given at least two days' notice of such hearing and afforded all reasonable opportunity to present evidence and to examine witnesses as to all the matters involved therein; and the said hearing under said Order No. 752 having come on before the said Commission on the 2d day of October 1908, at 2:30 o'clock in the afternoon, pursuant to the said order, Commissioners Willcox, Malible, Eustis, McCarroll and Bassett, presiding, George S. Coleman, Esq., appearing for the Commission, and Messrs. Masten and Nichols, John G. Milburn, Esq., and Robert C. Beatty, Esq., appearing for the receivers of the Metropolitan Street Railway Company, and Henry Thompson, Esq., A. H. Vanderpool, Esq., and Carleton Sprague Cooke, Esq., appearing for the Central Park, North and East River Railroad Company, and said hearing being continued by adjournments, with the same appearances, upon the following dates, to wit: October 7, 8, 13, 14, 15, 16, 17, 18, 23, and 24, 1908, and the proofs and arguments of said receivers and said railroad company having been at said hearing presented to the Commission.

Now, it appearing to the Commission that the rate, fare and charge as herein-after established in and by this order for through transportation of passengers upon each of the routes hereinafter set forth is just and reasonable and that the portions thereof to which said receivers and said railroad corporation affected thereby are entitled should be declared and fixed as hereinafter in this order set forth:

It is hereby

*Ordered*, (1) That a joint rate of fare of five cents from each passenger for the through transportation of passengers upon the lines specified in the following schedule and between the points therein designated be and the same hereby is established and ordered to be put in force by the said Adrian H. Joline and Douglas Robinson, as receivers, and by the said Central Park, North and East River Railroad Company, and be maintained by them for a period of four months from and after the taking effect of this order.

#### SCHEDULE.

The Fifty-ninth street line of the Central Park, North and East River Railroad Company means in this schedule the line on Fifty-ninth street between the east side of First avenue and the west side of Tenth avenue.

(a) From any point on the Fifty-ninth street line of the Central Park, North and East River Railroad Company to any intersecting line operated by the said receivers of the Metropolitan Street Railway Company, and north or south on such intersecting line to One Hundred and Sixteenth street or Thirty-fourth street.

(b) From any point between Thirty-fourth street and One Hundred and Sixteenth street on any line operated by said receivers intersecting the said Fifty-ninth street line to the said Fifty-ninth street line, and east or west on said line to its terminus.

(c) From any point between Thirty-fourth street and One Hundred and Sixteenth street on any line operated by said receivers intersecting the said Fifty-ninth street line to the said Fifty-ninth street line, and along said line to any other intersecting line operated by the said receivers, and thence along said intersecting line in the original direction to any point between Thirty-fourth street and One Hundred and Sixteenth street.

(2) That said joint rate be so established and maintained by the said receivers and by the said railroad company for through transportation of passengers upon each of the said routes between the points designated as aforesaid, thereon, by the use of a slip, coupon ticket or other sufficient token to be delivered to each passenger upon his stating his destination and at the time of his paying his fare, which shall identify such passenger so as to enable and require him, without other break in such transportation than a change of car, to pursue promptly his said through trip to his said destination.

(3) That the said fare of five cents for each such passenger so transported, in pursuance of this order shall be apportioned between the said receivers and the said Central Park, North and East River Railroad Company, so that the receivers shall have of the same the sum of three and three-fourths cents and so that the said Central Park, North and East River Railroad Company shall have therefrom the sum of one and one-fourth cents, the right thereto to be evidenced by production of the identification slips taken from such passengers, and accountings to be had and payments made semi-monthly. And it is further

*Ordered*, That said receivers and said railroad company each give to the other a bond to be approved by the Commission in the sum of one thousand dollars (\$1,000), conditioned for the payment of all moneys that may become payable for transportation of passengers, under the provisions of this order. And it is further

*Ordered*, That the said receivers and the said railroad company be and they hereby are allowed to put the said joint rate into effect as herein directed by filing one day in advance of the date herein specified the proper tariff schedule, as provided by the rules in tariff circular No. 1 of this Commission. And it is further

*Ordered*, That this order shall take effect on the 22d day of November, 1908, and that the said Adrian H. Joline and Douglas Robinson, as such receivers, and said Central Park, North and East River Railroad Company notify the Public Service Commission for the First District on or before the 6th day of November, 1908, whether the terms of this order are accepted and will be obeyed.

Upon application from each of the companies the following order was issued:

#### ORDER No. 821.

November 5, 1908.

Petitions having been received from Adrian H. Joline and Douglas Robinson, receivers of the Metropolitan Street Railway Company, and from the Central Park, North and East River Railroad Company, bearing date, respectively, November 4, 1908 and November 5, 1908, praying for a rehearing of Order No. 815.

*Ordered*, That said petitions be heard by the Commission on Monday, November 9, 1908, at 11 o'clock in the forenoon,

That the time within which said receivers and said company are required to notify the Commission whether the terms of said Order No. 815 are accepted and will be obeyed be, and the same hereby is extended to and including Wednesday, November 11, 1908, and that on or before said 11th day of November, 1908, said receivers and said company give such notification to the Commission.

Hearing held November 9th.

The following rehearing order was issued: .

ORDER FOR REHEARING No. 825.

November 10, 1908.

Petitions having been received from Adrian H. Joline and Douglas Robinson, receivers of the Metropolitan Street Railway Company, and from the Central Park, North and East River Railroad Company, bearing date, respectively, November 4, 1908 and November 5, 1908, praying for a rehearing of Order No. 815, and said petitions having come on before the Commission pursuant to an order for hearing on Monday, November 9, 1908, at 11 o'clock in the forenoon, Messrs. John G. Milburn and Robert C. Beatty appearing for said receivers, and William N. Dykeman, Esq., appearing for the said railroad company, and Oliver C. Semple, Esq., assistant counsel, appearing for the Commission, and after hearing the arguments of the applicants, and sufficient reason therefor being made to appear, it is now

*Hereby Ordered*, That a rehearing as to said Order No. 815 be had on Tuesday, November 10, 1908, at 11 o'clock in the forenoon, and that the time within which said receivers and the said company are required to notify the Commission whether the terms of said Order No. 815 are accepted and will be obeyed be, and the same hereby is extended to and including Friday, November 13, 1908, and that on or before said 13th day of November, 1908, said receivers and said company give such notification to the Commission.

Hearing held November 10th.

The following final order was issued:

ORDER ON REHEARING No. 830.

November 11, 1908.

Petitions having been received from Adrian H. Joline and Douglas Robinson, receivers of the Metropolitan Street Railway Company, and from the Central Park, North and East River Railroad Company, bearing date respectively November 4, 1908, and November 5, 1908, praying for a rehearing of Order No. 815; and said applications having come on for a hearing pursuant to order of the Commission No. 821, on Monday, November 9, 1908, and sufficient reason therefor being made to appear to the Commission, said rehearing having been granted and brought on for hearing under order of the Commission No. 825 on Tuesday, November 10, 1908, at 11 o'clock in the forenoon, Robert C. Beatty, Esq., appearing for said receivers and William N. Dykeman, Esq., appearing for the said railroad company, and Oliver C. Semple, Esq., Assistant Counsel, for the Commission; and proof having been presented and the arguments of the said receivers and of the said railroad company through counsel having been received, and due consideration having been had, it is now

*Ordered*, That the said order of the Public Service Commission for the First District numbered 815, made, entered and filed by the said Commission on October 30, 1908, be and the same hereby is in all things affirmed, except as to the time wherein the said receivers and the said railroad company are required to notify the said Commission whether the terms of said order are accepted and will be obeyed, and in that respect it is hereby further

*Ordered*, That the said Adrian H. Joline and Douglas Robinson, as receivers aforesaid, and the Central Park, North and East River Railroad Company notify the Public Service Commission for the First District on or before the 14th day of November, 1908, whether the terms of said Order No. 815, made, entered and filed herein on October 30, 1908, are accepted and will be obeyed.

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New York Central and Hudson River Railroad Company.—

Excess charges upon payment of cash fares upon the Harlem division in the city limits.

Opinion of Counsel.  
Complaint Order No. 348.  
Discontinuance Order No. 387.  
Opinion of counsel.  
Opinion of Commissioner McCarroll.

COMPLAINT OF W. F. VULZ

against

THE NEW YORK CENTRAL AND HUDSON RIVER  
RAILROAD COMPANY.

Complaint was made to the Commission that the New York Central was exacting an excess charge of ten cents from passengers who paid cash fare. The counsel to the commission rendered the following opinion in the matter:

## OPINION OF COUNSEL.

\*[Extra charge to passengers paying on train in New York city is unlawful.]

*Hon. JOHN E. EUSTIS, Commissioner:*

March 8, 1908.

Sir:—I am asked to advise whether the New York Central and Hudson River Railroad Company (Harlem division) has the legal right under Chapter 38, Laws of 1889, to collect an excess charge of ten cents over the regular rate of fare from passengers who pay fare in the car in which they take passage, "when the passage is wholly within the limits of the city of New York."

Chapter 38, Laws of 1889, entitled "An act to regulate the payment of fares upon railroads," provides as follows:

"Section 1. It shall be lawful for any company owning or operating a steam railroad in this State, to demand and collect an excess charge of ten cents over the regular or established rate of fare from any passenger who pays fare in the car in which he or she may have taken passage, *except where such passage is wholly within the limits of any incorporated city in this State*, provided, however, that it shall be the duty of such company to give to any passenger paying such excess, a receipt or other evidence of such payment, and which shall legibly state that it entitles the holder thereof to have such excess charge refunded, upon the delivery of the same at any ticket office of such company upon the line of their railroad, and said company shall refund the same upon demand; and provided further, that this act shall not apply to any passenger taking passage from a station or stopping place when tickets cannot be purchased during half an hour previous to the schedule time for the departure of said train on which such passenger takes passage."

This act of 1889 not having been repealed or amended, its provisions are law today. When the act was passed, New York, as an incorporated city, comprised practically only the Island of Manhattan. At that time, therefore, an excess charge as provided in the act could have been imposed on a passenger boarding the train at the Grand Central station and destined for a point above the Harlem river. But with the various annexations and the final consolidation of 1897, new corporate limits were established for the city of New York, and the different sections thus combined became a new "incorporated city" within the meaning of the act. It follows, therefore, that any attempt on the part of the New York Central and Hudson River Railroad to collect the excess charge from passengers going from one point within the city limits to another point within those limits is without legal sanction.

Respectfully yours,

(Signed) GEO. S. COLEMAN,

*Counsel to the Commission.*

Complaint Order No. 348 (see form, note 1) was issued March 20th.

The company then issued instructions to its conductors requiring them not to demand any excess fare in connection with the payment of cash fares upon trains for transportation between stations within the limits of the city of New York. The following discontinuance order was issued:

W. F. VULZ, <i>against</i> NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,	<i>Complainant,</i> <i>Defendant,</i>	DISCONTINUANCE ORDER NO. 387. March 31, 1908.
"Excess charge upon payment of cash fare upon the Harlem division within the city limits."		

An order, No. 348, having been made herein on or about the 20th day of March, 1908, ordering and directing the New York Central and Hudson River Railroad Company to answer complaint herein, within a time therein specified: and the said New York Central and Hudson River Railroad Company having, on March 26, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied,

Now, upon motion made and duly seconded, it is  
Resolved, That the proceedings herein be, and the same hereby are, discontinued.

\* See footnote, page 9.

Subsequently complaint was made that the Long Island Railroad Company was exacting an excess fare within the city limits, and the counsel to the commission rendered the following opinion in the matter:

**EXCESS FARE.**

\* [Collection of is prohibited within city limits under Laws of 1889, Chapter 38, which applies to the city as consolidated by Greater New York charter.]

**OPINION OF COUNSEL.**

Hon. WILLIAM McCARROLL, *Commissioner:*

May 27, 1908.

SIR:—I am in receipt of your letter of May 26, 1908, transmitting complaint files in the matter of fares charged by the Long Island Railroad Company, namely, File No. 21,548, relating to excess fares, and File No. C-1928, relating to discrimination in fares, and requesting an opinion to be used as a basis for such action as may be desirable for the Commission to take in the premises.

In respect to the question of "excess fares," the question arises upon complaint informally brought to the attention of the Commission of collection by the company of an excess fare on travel within the city limits. A slip accompanying your letter shows collection of ten cents between the Flatbush avenue and Morris Park stations. The matter having been called to the attention of the railroad company as an apparent violation of Chapter 38, Laws of 1889, letters have been addressed to you by Mr. Ralph Peters, president and general manager of the company, under date of May 14th and May 20th, respectively, in which it is claimed that the act of 1889 was intended to apply to the territorial divisions of the city as they existed at the time of the passage of the act, and that the formation of the new city of New York under the Greater New York Charter did not deprive the company of the privilege granted by the act of 1889.

In a letter which I have addressed to Commissioner Eustis under date of March 3, 1908, I expressed the opinion that the present city of New York became by consolidation a new "incorporated city" within the meaning of Chapter 38 of the Laws of 1889. I still think that the statute should be construed so as to apply to the varying conditions of incorporated cities as they may exist from time to time and should not be confined to the precise conditions existing when the law went into effect.

In his letter of May 20th, Mr. Peters suggests that if any conflicting opinion exists the matter should be left to the courts for adjudication. I think it would be proper to order a hearing upon a formal complaint to be prepared and after hearing to issue an order directing the company to refrain from charging the excess fare within the city limits. It would then be possible for the company to institute proceedings to restrain the Commission from enforcing its order by action for penalty or forfeiture or otherwise, or to defend such action or proceeding if instituted by the Commission.

With respect to "discrimination in fares" covered by File No. C-1928, I advise that an order for hearing be prepared upon the complaint of Mr. Mendelsohn and final action of the Commission be deferred until the close of such hearing.

The papers transmitted with your letter are herewith returned.

Respectfully yours,

(Signed) GEO. S. COLEMAN,

*Counsel to the Commission.*

Upon receipt of this opinion Commissioner McCarroll made the following report:

**OPINION OF COMMISSION.**

**COMMISSIONER McCARROLL:**—

As committee, to whom was referred the complaint of M. Mendelsohn, as to discrimination in fares, and also the matter of other complaint regarding the collection of excess fares by the Long Island Railroad, I have to report having taken up the matter of the excess fares by correspondence and that a complaint order was filed against the Long Island Railroad in the matter of discrimination, to which the company made answer.

In the matter of collection of excess fares, our counsel having rendered an opinion that same was illegal and the railroad company taking issue with that decision, I have to recommend that a hearing be given. It will then be possible for the Commission to issue order direct on the company to cease collecting this excess fare, if such should be the decision of the Commission.

I also recommend that like procedure be taken in the matter of discrimination in fares, and would add, on both of these points, I have consulted with counsel and attach herewith the papers and counsel's advices.

May 27, 1908.

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\* See footnote, page 9.

**New York Transfer Company.—Failure to refund excess charge for delivery of trunk.**

Complaint Order No. 385.  
Discontinuance Order No. 401.

COMPLAINT OF E. J. BENSON

*against*

NEW YORK TRANSFER COMPANY.

Complaint Order No. 385 (see form, note 1) issued March 31st.

The matters complained of were satisfied.

The following discontinuance order was issued:

E. J. BENSON, <i>against</i> NEW YORK TRANSFER COMPANY,	<i>Complainant,</i> <i>Defendant.</i>	DISCONTINUANCE ORDER No. 401. April 7, 1908.
"Failure to refund excess charge for delivery of trunk."		

An order, No. 385, having been made herein on or about the 31st day of March, 1908, ordering and directing the New York Transfer Company to answer complaint herein within a time therein specified, and the said New York Transfer Company having, on April 2, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied, and the complainant herein having, on April 6, 1908, notified this Commission in writing of such satisfaction,

Now, upon motion made and duly seconded, it is  
*Resolved*, That the proceedings herein be, and the same hereby are, discontinued.

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**Richmond Light and Railroad Company and Staten Island Midland Railway Company.—Exchange of transfers on Staten Island.**

Complaint Order No. 702.  
Extension Order No. 714.  
Hearing Order No. 739.

COMPLAINT OF STATEN ISLAND CHAMBER OF COMMERCE  
*against*

RICHMOND LIGHT AND RAILROAD COMPANY AND STATEN  
 ISLAND MIDLAND RAILWAY COMPANY,

Complaint Order No. 702 (see form, note 1) issued August 28th.  
 Extension Order No. 714 (see form, note 2) issued September 8th.  
 Hearing Order No. 739 (see form, note 3) issued September 25th.  
 Hearings held October 8th, November 6th, 16th and December 21st.  
 Adjourned to January 13th, 1909.

258 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

**South Brooklyn Railway Company.** — Extension of service from West Twelfth street to West Thirty-fifth street on Surf avenue, Coney Island.

Complaint Order No. 272.  
Extension Order No. 325.  
Extension Order No. 411.  
Extension Order No. 482.  
Hearing Order No. 526.  
Opinion of Commissioner Bassett.  
Dismissal Order No. 599.

**COMPLAINT OF E. ALEXANDER WILLIAMS AND OTHERS**  
*against*

**THE SOUTH BROOKLYN RAILWAY COMPANY.**

Complaint Order No. 272 (see form, note 1) issued February 18th.  
Extension Order No. 325 (see form, note 2) issued March 10th.  
Extension Order No. 411 (see form, note 2) issued April 10th.  
Extension Order No. 482 (see form, note 2) issued May 12th.  
Hearing Order No. 526 (see form, note 3) issued May 26th.  
Hearings were held June 8th and 17th.

\*[Complaint not in proper form to raise question of fare.]

**OPINION OF COMMISSION.**  
(Adopted June 23, 1908.)

**COMMISSIONER BASSETT:**—

The complainants desire to have two separate operating companies carry from Norton's Point, Coney Island to Brooklyn bridge for one fare of ten cents. When the complainants filed their complaint they were under the impression that a single company operated the entire route. The complaint, however, did not disclose the fact that the subject of fare was one of the causes of their complaint.

There is no object in causing the road complained against to run passenger cars if an extra fare is charged inasmuch as the Surf avenue line now fulfills all requirements. The complainants offer no proof whatever calculated to show that the two operating companies should make a through route fare of fifteen cents.

It will be necessary for the complainants to frame a different complaint in order to bring up for remedy the subjects that they desire, and the attorney for the complainants at the close of the hearing conceded this to be the case.

An order should be prepared dismissing the complaint.

Thereupon the following dismissal order was issued:

In the Matter of the Complaint of  
E. ALEXANDER WILLIAMS, et al.,  
*Complainants,*  
*against*  
SOUTH BROOKLYN RAILWAY COMPANY,  
*Defendant.*  
After Hearing Order No. 526.

DISMISSAL ORDER.  
No. 599.  
June 23, 1908.

This matter coming on upon the report of the hearing had herein on the 8th day of June, 1908, and on the 17th day of June, 1908; and it appearing that the said hearing was held pursuant to order of this Commission No. 526, return-

\* See footnote, page 9.

**ORDERS OF THE COMMISSION ISSUED IN 1908.**      **259**

able on the 8th day of June, 1908, made upon the complaint and answer herein, and that said order was duly served upon the said E. Alexander Williams, complainant, and upon said South Brooklyn Railway Company, and that the said service was by said company duly acknowledged, and that said hearing was held by and before the Commission on the matters in said complaint, answer and order specified on June 8, 1908, and June 17, 1908, before Mr. Commissioner Bassett, presiding; E. Alexander Williams, Esq., complainant, appearing in person; Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and George D. Yeomans, Esq., appearing for the South Brooklyn Railway Company, and proof having been taken upon said hearing, and it having been made to appear after the proceedings on said hearing that the complainants in filing their complaint desired to have two separate operating companies carry from Norton's Point, Coney Island, to Brooklyn Bridge for one fare of ten cents, but filed their complaint against a single company with the understanding that a single company operated the entire route, and did not disclose in their complaint that the subject of fare was one of the causes of their complaint; and it having been made to appear after the proceedings on said hearing that said entire route is not operated by a single company, and that a new complaint should be framed against the proper companies if it is desired to have these companies operate the entire route for a single rate of fare; and it having been made to appear after the proceedings on said hearing that there would be no object in causing the road complained against to run passenger cars upon the tracks mentioned in the complaint if an extra fare is charged, inasmuch as the Surf avenue line now fulfills all requirements;

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered,*

(1) That said complaint be and the same hereby is dismissed, and that this order be filed in the office of the Commission.

(2) *It is further Ordered,* That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission against the proper company or companies in respect to any of the matters covered by said complaint and the answer or the proceedings thereon.

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**Staten Island Railway Company.—Refusal to accept tickets presented more than three days after purchase, for use between St. George and Tottenville.**

**COMPLAINT OF ALBERT H. McGEEHAN**

*against*

**STATEN ISLAND RAILWAY COMPANY.**

Complaint Order No. 301 (see form, note 1) issued March 3d.

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**Staten Island Rapid Transit Railway Company and the Staten Island Railway Company.—Passenger rates on Staten Island.**

Complaint Order No. 481.  
Hearing Order No. 531.

**COMPLAINT OF THE FIFTH WARD IMPROVEMENT ASSOCIATION**

*against*

**THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY AND  
THE STATEN ISLAND RAILWAY COMPANY.**

Complaint Order No. 481 (see form, note 1) issued May 12th.

Hearing Order No. 531 (see form, note 3) issued May 26th.

Hearings held July 8th, 15th, 21st, November 10th, 13th, 18th, 25th, December 7th and 14th.

**Third Avenue Railroad Company, Forty-second Street, Manhattanville, and St. Nicholas Avenue Railroad Company, and Central Park, North and East River Railroad Company.— Through routes and joint rates.**

Hearing Order No. 786.  
Extension Order No. 793.  
Hearing Order No. 796.

In the Matter  
of the

Order of the Commission, requiring FREDERICK W. WHITRIDGE, as Receiver of the THIRD AVENUE RAILROAD COMPANY and the CENTRAL PARK, NORTH AND EAST RIVER RAILROAD COMPANY to establish Certain Through Routes and Joint Rates.

ORDER No. 786.  
October 14, 1908.

*It is hereby Ordered,* That Frederick W. Whitridge, as receiver of the Third Avenue Railroad Company, and the Central Park, North and East River Railroad Company, be required to establish on or before 10:30 o'clock in the forenoon of October 18, 1908, by proper connection between their respective lines of transportation a through route for the transportation of passengers between the points and upon the lines specified in the attached schedule, and be required to establish and put in force a joint rate of fare for each such passenger by the use of a transfer slip, coupon ticket or other sufficient token delivered to such passenger, and apply the said rate of fare to the transportation of passengers over the routes and each of them specified in the said schedule, unless modified in accordance with the provisions of the Public Service Commissions Law; or in case the said Receiver and the said Railroad Company shall not be able within the time hereinbefore fixed to establish and put in force just and reasonable rates, fares and charges for such through transportation, then that a hearing be had on the 10th day of October, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Public Service Commission for the First District, No. 154 Nassau street, borough of Manhattan, city and state of New York, to inquire

(1) Whether the Commission should not establish a joint rate for passengers upon the lines specified in the schedule hereto attached of five cents per passenger, or if such joint fare would be unjust and unreasonable then what joint fare should be established and put in force.

(2) To what portion of said joint fare the said receiver and the said railway company, respectively, should be entitled.

(3) In what manner the respective portions of such joint fare should be paid and secured to the said receiver and the railroad company.

SCHEDULE.

1. From any point on the Fifty-ninth street line of the Central Park, North and East River Railroad Company to any intersecting line operated by Frederick W. Whitridge as receiver of the Third Avenue Railroad Company, and north or south on such intersecting line to its terminus.

2. From any point on any line operated by the said receiver intersecting the said Fifty-ninth street line to the said Fifty-ninth street line and east or west on said line to its terminus.

3. From any point on any line operated by the said receiver intersecting the said Fifty-ninth street line to the said Fifty-ninth street line and along said line to any other intersecting line operated by the said receiver and thence along said intersecting line in the original direction to its terminus.

The following order, extending the time for compliance with the foregoing, was issued:

EXTENSION ORDER No. 793.

October 19, 1908.

An order, No. 786, having been made herein on or about the 14th day of October, 1908, ordering and directing the Third Avenue Railroad Company and the Central Park, North and East River Railroad Company to establish on or before October 18, 1908, certain through routes and joint rates.

Now, on motion made and duly seconded, it is

**Ordered,** That the time of the Third Avenue Railroad Company and the Central Park, North and East River Railroad Company within which to establish the through routes and joint rates above mentioned be, and the same hereby is extended to and including the 22nd day of October, 1908.

The through routes and joint rates set forth in Order No. 786 not having been established within the time fixed by the extension order, a new hearing order, No. 796, covering the matters set forth in Order No. 786 and other matters was issued October 23d and thereafter the hearings were had on Order No. 796.

In the Matter  
of the

**Order of the Commission requiring FREDERICK W. WHITRIDGE, as Receiver of the Third Avenue Railroad Company and as Receiver of the Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company and the Central Park, North and East River Railroad Company, to establish certain through routes and joint rates.**

ORDER No. 796.  
October 23, 1908.

*It is hereby Ordered,* That Frederick W. Whitridge, as Receiver of the Third Avenue Railroad Company and as Receiver of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railroad Company and the Central Park, North and East River Railroad Company, be required to establish on or before 11 o'clock in the forenoon of October 28, 1908, by proper connection between their respective lines of transportation through routes for the transportation of passengers between the points and upon the lines specified in the attached schedule, and be required to establish and put in force a joint rate of fare for each such passenger by the use of a transfer slip or coupon ticket or other sufficient token delivered to such passenger, and apply the said rate of fare to the transportation of passengers over the routes and each of them specified in the said schedule, unless modified in accordance with the provisions of the Public Service Commissions Law; or in case the said Frederick W. Whitridge, as Receiver of the Third Avenue Railroad Company and as Receiver of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company, and the said railroad company shall not be able within the time hereinbefore fixed to establish and put in force just and reasonable rates, fares and charges for such through transportation, then that a hearing be had on the 28th day of October, 1908, at 11 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Public Service Commission for the First District, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire

(1) Whether the Commission should not establish a joint rate for passengers upon the lines specified in the schedule hereto attached of five cents per passenger, or if such joint fare would be unjust and unreasonable then what joint fare should be established and put in force.

(2) To what portion of said joint fare the said Frederick W. Whitridge as Receiver of the Third Avenue Railroad Company, and as Receiver of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company, and the said railroad company, respectively, should be entitled.

(3) In what manner the respective portions of such joint fare should be paid and secured to the said Frederick W. Whitridge, as Receiver of the Third Avenue Railroad Company, and as Receiver of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company and the railroad company.

SCHEDULE.

1. From any point on the Fifty-ninth Street line of the Central Park, North and East River Railroad Company to any intersecting line operated by Frederick W. Whitridge, either as Receiver of the Third Avenue Railroad Company or as Receiver of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company, and north or south on such intersecting line to its terminus.

2. From any point on any line operated by the said Frederick W. Whitridge, either as Receiver of the Third Avenue Railroad Company or as Receiver of the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company intersecting the said Fifty-ninth Street line to the said Fifty-ninth Street line and east or west on said line to its terminus.

3. From any point on any line operated by the said Frederick W. Whitridge, either as Receiver of the Third Avenue Railroad Company or as Receiver of the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company intersecting the said Fifty-ninth Street line to the said Fifty-ninth Street line and along said line to any other intersecting line operated by the said

Frederick W. Whitridge, either as Receiver of the Third Avenue Railroad Company or as Receiver of the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company and thence along said intersecting line in the original direction to its terminus.

Hearings held October 28th, 30th, November 5th, 12th, 13th, 18th, 24th, 25th, December 1st, 3d, 7th, 11th, 18th, 22d and 24th.

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**Yonkers Railroad Company — Union Railway Company of New York City.— Through routes between New York city and Yonkers.**

Complaint Order No. 776.  
Hearing Order No. 850.

**COMPLAINT OF NATHAN A. WARREN**

*against*

**YONKERS RAILROAD COMPANY AND LESLIE SUTHERLAND, Its Receiver, and THE UNION RAILWAY COMPANY of New York City and FREDERICK W. WHITRIDGE, Its Receiver.**

Complaint Order No. 776 (see form, note 1) issued October 10th.  
Hearing Order No. 850 (see form, note 3) issued November 20th.

Hearings were held November 27th, 30th and December 10th.

Adjourned subject to call.

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**ANNUAL AND OTHER REPORTS AND INFORMATION REQUIRED TO BE FILED BY CORPORATIONS.**

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**FORM OF ANNUAL REPORTS OF STEAM RAILROAD CORPORATIONS.**

Final Order No. 612.  
Extension Order No. 747.  
Extension Order No. 747a.  
Extension Order No. 747b.  
Final Order No. 766.

**ORDER No. 612.**

June 26, 1908.

The Public Service Commission for the First District being authorized and required by section 46 of the Public Service Commissions Law to prescribe the form of the annual report required under said act to be made by railroad corporations subject to its jurisdiction, it is hereby

*Ordered*, That the form for annual reports of all railroad corporations subject to the jurisdiction of the Commission, as that term is defined in section 2 of the Public Service Commissions Law, owning, controlling or operating any railroad on which steam is used as a motive power, for the year ending June 30, 1908, as the said form has been prepared by the chief statistician of the Commission based upon the classification of accounts prescribed by this Commission on the 31st day of December, 1907, be and the same is hereby approved and prescribed by the Public Service Commission for the First District as the form of annual report for the year ending June 30, 1908, required to be made and filed by every such railroad corporation with said Commission. And it is further

*Ordered*, That the Secretary of this Commission serve upon each of the said railroad corporations on or before June 30, 1908, in the manner prescribed by law, a certified copy of this order and two copies of the form hereby prescribed.

## In the Matter

of the

**Filing of Annual Reports by RAILROAD CORPORATIONS** within the jurisdiction of the Public Service Commission for the First District in accordance with Section 46 of the Public Service Commissions Law.

ORDER No. 766.  
MODIFYING FORM OF  
ANNUAL REPORT.  
October 6, 1908.

An order of the Commission, No. 612, having been made and filed herein on or about the 26th day of June, 1908, approving and prescribing a form of annual report to be filed by all railroad corporations subject to the jurisdiction of the Commission in accordance with the provisions of section 46 of the Public Service Commissions Law, and a certified copy of said order with two copies of the form therein prescribed having been duly served upon all such railroad corporations, and it appearing that certain modifications should be made in said form so prescribed,

Now, on motion made and duly seconded, it is

**Resolved**, That the form of annual report for railroad corporations within the jurisdiction of the Public Service Commission for the First District, as prescribed by Order No. 612 above mentioned, be, and the same hereby is, modified in accordance with the following schedule of modifications:

**SCHEDULE OF MODIFICATIONS.**

- Page 4.** Strike out the last sentence of the inquiry. Omit filling out the column headed Annual Salary Attached to the Office, June 30, 1908.
- Page 5.** Omit 3.
- Page 7.** Inquiry No. 1. After the word "meeting" insert "for the election of directors."
- Page 10.** Strike out the entire page.
- Page 11.** Strike out the entire page.
- Pages 22 and 23.** Strike out the entire pages.
- Page 32.** Strike out the entire page.
- Page 33.** Strike out the entire page.
- Page 35.** Add to inquiry No. 1 the words "and ordinary surety bonds and undertakings on appeals in court proceedings." Add to inquiry No. 2 "nor does it include ordinary surety bonds or undertakings on appeals in court proceedings."
- Page 36.** Strike out the entire page.
- Page 39.** At the conclusion of the inquiry strike out the words "and an estimate should be made for the distribution of the total expenditures among the accounts named."
- Page 54.** Omit the column headed "Minimum Number in Service During the Year."
- Pages 56 and 57.** In the second column heading strike out the words "in service" and interpret the requirement to include all active locomotives in the equipment list, including those in the shops and those awaiting shops. In the third column substitute the word "added" for the words "placed in service," so that the requirement will read "added during the year." In the fourth column strike out the words "from service," so that the heading will read "withdrawn during the year." In the fifth column substitute for the word "in" the words "available for." Entries in this column should exclude locomotives in the shop or held awaiting shop. In the main heading over the remaining columns strike out the words "in service" and interpret the inquiry in accordance with the direction given concerning the second column.
- Page 59.** In showing the number of cars in revenue service show all active cars in the equipment list and include those in shops and those awaiting shops.
- Page 62 and**
- Page 63.** Omit at the conclusions of the inquiries on these two pages the words "and estimates of the distribution in accordance with such classification should be shown."
- Page 67.** Omit the entire page.
- Page 71.** Omit the requirement for the schedule "Distribution of Joint Facilities Credits" on the lower half of this page.
- Page 76.** Omit the requirement for "Distribution of Joint Facilities Debits."

**Page 77.** The three columns headed respectively Miles, Days and Other Units under the heading Total Number of Units of Service are to show the total amount of service rendered by the hired equipment of the class indicated in accordance with the contract under which the hire accrues: that is to say, if the basis of accrual is the number of miles, that shall be shown in the column headed Miles; if the basis is the number of days, it is to be shown in the column headed Days. If the basis of accrual is something other than miles and days, the amount is to be shown in the column headed Other Units, and the name of the unit is to be written in the space provided for it. In case of two or more classes of units besides miles and days, the matter should be explained in the space provided at the bottom of the page.

**Page 78.** Omit for the present year the two columns Rate of Rent Per Month and Number of Months Occupied.

**Page 81.** In the first line substitute for the words "were in force at any time" the words "became effective."

**Page 92.** The column "Number of Payrolls, June 30" should read "Number on Payrolls, June 30." Where the payroll accounts of the respondent do not show to a sufficient extent the characters of the contracts under which the pay accrues to enable the matter to be shown as called for on page 92, that fact should be stated and the columns headed Basis B may be disregarded; and, in the columns headed Basis A, under "amount of service" may be shown the total number of days worked as called for by the Interstate Commerce Commission, and under the "total compensation" may be shown the total yearly compensation as called for by the Interstate Commerce Commission. In the column headed Average Rate of Compensation may be shown the "average daily compensation" as called for by the Interstate Commerce Commission. In the third line of the inquiry at the head of the page the words "or of new equipment" may be stricken out.

Orders extending the time within which certain railroad corporations should file their annual reports in compliance with Public Service Commissions Law, section 46, were issued in substantially the following form, to which reference as hereinbelow indicated:

(Blank Form.)

In the Matter of the <b>Filing of Annual Reports by RAILROAD CORPORATIONS</b> within the jurisdiction of the Public Service Commission for the First District in accordance with Section 46 of the Public Service Commissions Law.	<b>EXTENSION ORDER</b> No. —.
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An order of the Commission, No. 612, having been made herein on or about the 26th day of June, 1908, approving and prescribing a form of annual report to be filed by all railroad corporations subject to the jurisdiction of the Commission in accordance with the provisions of section 46 of the Public Service Commissions Law, and applications in writing having been received from certain of such corporations requesting an extension of the time prescribed in the section above mentioned,

Now, on motion made and duly seconded, it is

*Resolved*, That the time within which the railroad companies below mentioned shall file their annual reports in compliance with section 46 of the Public Service Commissions Law be and the same hereby is extended to and including the ..... day of ....., 1908.

Upon written applications of the following named companies the time within which the annual reports of the said companies should be filed was extended as hereinbefore indicated:

Extension order No. 747 (see blank form) issued September 30, 1908, extended the time of the following named companies to and including October 15, 1908:

Glendale and East River Railroad Company;

Jamaica and South Shore Railroad Company;

New York, Brooklyn and Manhattan Beach Railroad Company;

New York and Rockaway Beach Railroad Company.

Extension Order No. 747-A (see blank form) issued October 20, 1908, extended the time of the following named companies to and including October 31, 1908:

Staten Island Railway Company;

Staten Island Rapid Transit Railway Company.

Extension Order No. 747-B (see blank form) issued October 23, 1908, extended the time of the following named company to and including November 1, 1908:

New York and Rockaway Beach Railway Company.

**Brooklyn City and Newtown Railroad Company.—Amending annual report.**

Hearing Order No. 598.

Opinion of Commissioner Bassett.

Final Order No. 726.

Rehearing Order No. 759.

Final Order No. 792.

In the Matter  
of the

Hearing on motion of the Commission as to amending  
the annual report of the BROOKLYN CITY  
& NEWTOWN RAILROAD COMPANY.

HEARING ORDER No. 598.  
June 23, 1908.

*It is hereby ordered,* That a hearing be had on the 9th day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire and determine whether the asset in the balance sheet of the report of the Brooklyn City and Newtown Railroad Company for the year ended June 30, 1907, designated as "Lease to Coney Island & Brooklyn Railroad Company, \$923,400," is an improper asset and ought to be eliminated from the report of the company, together with the corresponding credit to capital stock outstanding:

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn City & Newtown Railroad Company be given at least eight (8) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearing held September 9th.

**OPINION OF COMMISSION.**

(Adopted September 22, 1908.)

**COMMISSIONER BASSETT:—**

On June 30th, 1897, the Brooklyn City & Newtown Railroad Company had \$1,000,000 capital stock issued and outstanding out of an authorized capital of \$2,000,000. On or about August 4th, 1897, the company in pursuance of an agreement made with certain stockholders of the Coney Island & Brooklyn Railroad Company delivered to them or to some one for them its certificates for \$923,400, the intention being that the consideration to be received by it should be \$923,400 of the Coney Island & Brooklyn Railroad Company's stock. The stockholders of the Coney Island & Brooklyn Railroad Company, however either never delivered that stock to the Brooklyn City & Newtown Railroad Company, or else took it back immediately after its delivery. The new stock of the Brooklyn City & Newtown Railroad Company therefore was put out without consideration and hence was not legally issued. As between the Brooklyn City & Newtown Railroad Company and those who took the certificates the transaction was invalid.

The Brooklyn City & Newtown Railroad Company, however, had already charged its investment account with stock of the other company \$923,400, and credited its

capital stock account with the new issue of its own stock to the amount of \$923,400. Inasmuch as the transaction was never completed and the stock of the Brooklyn City & Newtown Railroad Company was never legally issued, this entry should have been elided from its accounts, or counter-entries should have been made charging capital stock account to stock never issued, \$923,400; credit investment account by Coney Island & Brooklyn Railroad Company stock never received, \$923,400.

This would have wiped out the matter and the books of the Brooklyn City & Newtown Railroad Company would have harmonized with the facts. It would not have required the filing of a new certificate to decrease the capital stock unless other reasons should in the opinion of its counsel have rendered this course desirable. The moment before the new issue was attempted to be made the Brooklyn City & Newtown Railroad Company had \$1,000,000 stock issued and outstanding out of an authorized capitalization of \$2,000,000, and it is plain that if the new issue was illegal and ineffectual this exact position remained.

Instead, however, of eliding the entries or making the proper counter-entries the Brooklyn City & Newtown Railroad Company transferred this sum by charging it to a lease account. At the same time it closed the investment by making a credit to that account of Coney Island & Brooklyn Railroad Company stock \$923,400. This effectually took the Coney Island & Brooklyn Railroad Company stock out of its investments, which was right, for it never belonged there. It left, however, a charge under its lease account of a lease of the Coney Island & Brooklyn Railroad of \$923,400, which was incorrect because the lease had never cost that sum. It also left its capital stock account credited with the new issue, \$923,400, which in point of fact was never issued. This error has been perpetuated in many annual reports.

The reports of the company should be according to the facts. This will be accomplished by striking off the ledger on one side the lease item of \$923,400 and off the other the stock never legally issued of equal amount. Or if done by making counter-entries the capital stock account should be charged with stock never legally issued, \$923,400 and the lease account should be credited with the same sum. The company may then reduce its capital stock or not as it may be advised by counsel. An order should be made permitting these entries.

Thereupon the following final order was issued:

**FINAL ORDER No. 726.**

September 22, 1908.

This matter coming on upon the report of the hearing had herein on the 9th day of September, 1908, and it appearing that said hearing was had pursuant to Order No. 598 of this Commission, dated June 24, 1908, issued upon motion of the Commission and returnable on the 9th day of September, 1908; and it appearing that said order was duly served upon said Brooklyn City and Newtown Railroad Company and that said service was by said company duly acknowledged; and it appearing that said hearing was had by and before the Commission on said 9th day of September, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission, and Messrs. Dyckman, Oeland and Kuhn, attorneys, appearing for said railroad company; and testimony having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that the annual report of said Brooklyn City and Newtown Railroad Company for the year ending June 30, 1907, is defective and erroneous in that the asset in the balance sheet of the report of said company for said year, designated as "Lease to Coney Island and Brooklyn Railroad Company, \$923,400," is an improper asset and ought to be eliminated from the report of said company and that the corresponding credit to capital stock outstanding is an improper credit and ought to be eliminated from said report; and that the ledger of said company should be modified accordingly.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is  
**Ordered**, That said Brooklyn City and Newtown Railroad Company be and it hereby is directed and required to amend and modify said annual report,

(1) By striking off the debit side thereof the lease item of \$923,400 and off the credit side the corresponding credit of equal amount to capital stock outstanding, or

(2) By charging capital stock account with "Stock never legally issued, \$923,400," and by crediting the account containing the "Lease" item with an equal amount. It is further

*Ordered*, That said annual report be amended as aforesaid within thirty days after service on said company of a certified copy of this order. It is further

*Ordered*, That entries in the ledger of said company, in accordance with the foregoing provisions, are hereby permitted. It is further

*Ordered*, That this order shall take effect as above provided and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order. It is further

*Ordered*, That said Brooklyn City and Newtown Railroad Company notify the Public Service Commission for the First District within five days after service upon said company of a certified copy of this order whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

#### REHEARING ORDER No. 759.

October 2, 1908.

An order, No. 726, having been made and filed herein on the 22d day of September, 1908, after a hearing had under Order for Hearing No. 588, directing the Brooklyn City and Newtown Railroad Company to amend and modify its annual report in the particulars and in the manner mentioned in said Order No. 726, and said Order No. 726 having been duly served upon said Brooklyn City and Newtown Railroad Company and said Brooklyn City and Newtown Railroad Company having on or about the 28th day of September, 1908, made application in writing to this Commission for a rehearing in respect to the matter contained in said Order No. 726, and sufficient reasons for said rehearing having been made to appear, it is

*Ordered*, That said request for a rehearing be granted and that the said rehearing upon the matters contained in said Order No. 726 be held on the 15th day of October, 1908, at 4 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City and State of New York, to determine, after such rehearing and after consideration of the facts, including those arising after the making of said Order No. 726, whether said Order No. 726 or any part thereof is unjust or unwise and whether the said Order No. 726 should be abrogated, changed or modified.

And if it be determined that said order should be changed or modified, then to determine the nature and extent of any changes or modifications of said order and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable. It is further

*Ordered*, That said Brooklyn City and Newtown Railroad Company be given at least ten days' notice of such rehearing by service upon it either personally or by mail of a certified copy of this order and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held October 15th.

The following final order was issued:

#### FINAL ORDER No. 792, AMENDING FINAL ORDER No. 726.

October 20, 1908.

This matter coming on upon the report of the rehearing had herein on the 15th day of October, 1908, and it appearing that said rehearing was had by and before the Commission pursuant to Order for Rehearing No. 759 dated October 2, 1908, and it appearing that said order for rehearing was duly served upon the said Brooklyn City and Newtown Railroad Company on the 3d day of October, 1908, and it appearing that said rehearing was had by and before the Commission on the 15th day of October, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission, and Messrs. Dykman, Oeland & Kuhn, attorneys, appearing for said railroad company, and argument having been had upon said rehearing and the Commission being of the opinion after such rehearing and a consideration of the facts including those arising since the making of Final Order No. 726 that said Final Order No. 726 was and is in certain respects not adapted to the alleged position of third parties and that changes and modifications therein ought reasonably to be made in the respects hereinafter mentioned;

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, That said Final Order No. 726 be and the same hereby is amended and modified *nunc pro tunc* as of the 22d day of September, 1908, so as to read as follows:

## FINAL ORDER No. 726.

This matter coming on upon the report of the hearing had herein on the 9th day of September, 1908, and it appearing that said hearing was had pursuant to Order No. 598 of this Commission dated June 24, 1908, issued upon motion of the Commission and returnable on the 9th day of September, 1908, and it appearing that said order was duly served upon said Brooklyn City and Newtown Railroad Company, and that said service was by said company duly acknowledged, and it appearing that said hearing was had by and before the Commission on said 9th day of September, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission, and Messrs. Dykman, Oeland & Kuhn, attorneys, appearing for said railroad company, and testimony having been taken upon said hearing, and it having been made to appear after the proceedings on said hearing that the annual report of said Brooklyn City and Newtown Railroad Company for the year ending June 30, 1907, is defective and erroneous in that the asset in the balance sheet of said company for said year designated as "Lease to Coney Island and Brooklyn Railroad Company, \$923,400.00," is an improper asset and ought to be eliminated from all subsequent reports of said company and that the corresponding credit to capital stock outstanding is an improper credit and ought to be eliminated from all subsequent reports of said company, and that the ledger of said company should be modified accordingly.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is ordered,

1. That said Brooklyn City and Newtown Railroad Company be and it hereby is directed and required to eliminate from all annual reports filed by said company from and after the date of the taking effect of this order the improper entries above mentioned, either

(a) By striking off the debit side thereof the lease item of \$923,400 and off the credit side the corresponding credit of equal amount to capital stock outstanding, or

(b) By charging capital stock account with "Stock Never Legally Issued, \$923,400.00" and by crediting the account containing the "lease" item with an equal amount.

2. It is furthered ordered, That entries in the ledger of said company in accordance with the foregoing provisions are hereby permitted.

3. It is further ordered, That this order shall take effect in five (5) months from and after the date of this order (September 22, 1908) and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

4. It is further ordered, That said Brooklyn City and Newtown Railroad Company notify the Public Service Commission for the First District on or before October 24, 1908, whether the terms of this order are accepted and will be obeyed.

## Form of Annual Reports of Street Railroad Corporations.

Final Order No. 613.  
Modifying Order No. 767.  
Extension Order No. 748.  
Extension Order No. 748a.  
Extension Order No. 748b.  
Extension Order No. 748c.  
Extension Order No. 748d.  
Extension Order No. 748e.  
Extension Order No. 748f.  
Extension Order No. 748g.  
Extension Order No. 748h.

## ORDER No. 613.

June 29, 1908.

The Public Service Commission for the First District being authorized and required by section 46 of the Public Service Commissions Law to prescribe the form of the annual report required under said act to be made by street railroad corporations and railroad corporations subject to its jurisdiction, it is hereby

*Ordered*, That the form for annual reports of all street railroad corporations subject to the jurisdiction of the Commission, as that term is defined in section 2 of the Public Service Commissions Law, owning, controlling or operating any street railroad, and that the form for annual reports of all railroad corporations, as that term is defined in section 2 of the Public Service Commissions Law, owning, controlling or operating any railroad using electricity as a motive power, for the year ending June 30, 1908, as the said form has been prepared by the Chief

Statistician of the Commission based upon the classification of accounts in force June 30, 1907, be and the same is hereby approved and prescribed by the Public Service Commission for the First District as the form of annual report for the year ending June 30, 1908, required to be made and filed with said Commission by every such street railroad corporation and every such railroad corporation.

*And it is further ordered,* That the Secretary of this Commission serve upon each of the said street railroad corporations and railroad corporations, in the manner prescribed by law a certified copy of this order and two copies of the form hereby prescribed.

In the Matter

of the

Filing of annual reports by STREET RAILROAD CORPORATIONS within the jurisdiction of the Public Service Commission for the First District in accordance with section 46 of the Public Service Commissions Law.

ORDER No. 767.  
MODIFYING FORM OF ANNUAL REPORT.

October 6, 1908.

An order of the Commission, No. 613, having been made and filed herein on or about the 26th day of June, 1908, approving and prescribing a form of Annual Report to be filed by all street railroad corporations subject to the jurisdiction of the Commission in accordance with the provisions of section 46 of the Public Service Commissions Law, and a certified copy of said order with two copies of the form therein prescribed having been duly served upon all such street railroad corporations, and it appearing that certain modifications should be made in said form so prescribed,

Now, on motion made and duly seconded, it is

*Resolved,* That the form of annual report for street railroad corporations within the jurisdiction of the Public Service Commission for the First District, as prescribed by Order No. 613 above mentioned, be, and the same hereby is, modified in accordance with the following schedule of modifications:

#### SCHEDULE OF MODIFICATIONS.

- Page 4. Strike out the last sentence of the inquiry. Omit filling out the column headed Annual Salary Attached to the Office, June 30, 1908.
- Page 5. Omit 3.
- Page 7. Inquiry No. 1. After the word "meeting" insert "for the election of directors."
- Page 9. Strike out the entire page.
- Page 10. Strike out the entire page.
- Page 12. Strike out the entire page.
- Page 22. Strike out the entire page.
- Page 23. Strike out the entire page.
- Page 31. Strike out the entire page.
- Page 32. Add to Inquiry No. 3 the words, "and ordinary surety bonds and undertakings on appeals in court proceedings." Add to inquiry No. 4, "nor does it include ordinary surety bonds or undertakings on appeals in court proceedings."
- Page 35. At the end of the third line strike out the word "and" and at the beginning of the fourth line the words "an estimate should be made for the distribution of the total expenditures among the accounts named."
- Page 50. Interpret this inquiry to mean the number of units on the equipment list, whether in shop, awaiting shop or on the road. The inquiry in column 5 headed "Minimum Number in Service During the Year" may be omitted.
- Page 59. Lower half of the page. In the schedule entitled Hired Equipment, the inquiry for the total number of units of service is designed to call for the units of service expressed in accordance with the terms of the contract under which the hire accrues. If the hire accrues upon the basis of equipment miles the entry should be in the column headed Miles; if upon the basis of equipment days, in the column headed Days; if upon some other basis, the entry should be in the column headed Other Units and the units should be designated.
- Page 68. In the schedule of "Other Rents Accrued — Debits," the columns headed "Rate of Rent Per Month" and "Number of Months Occupied," may be omitted.
- Page 78. In the first line, for the words "were in force at any time" substitute the words "became effective."

Orders extending the time within which certain street railroad corporations should file their annual reports in compliance with Public Service Commissions Law, section 46, were issued in substantially the following form, to which reference will be hereinafter made:

(Blank Form.)

<p>In the Matter of the  Filing of Annual Reports by STREET RAIL- ROAD CORPORATIONS within the juris- diction of the Public Service Commission for the First District in accordance with Section 46 of the Public Service Commissions Law.</p>	EXTENSION ORDER No. —.
--	---------------------------

An order of the Commission, No. 613, having been made herein on or about the 26th day of June, 1908, approving and prescribing a form of annual report to be filed by all street railroad corporations subject to the jurisdiction of the Commission, in accordance with the provisions of section 46 of the Public Service Commissions Law, and applications in writing having been received from certain of such corporations requesting an extension of the time prescribed in the section above mentioned.

Now, on motion made and duly seconded, it is

*Resolved*, That the time within which the street railroad companies below mentioned shall file their annual reports, in compliance with section 46 of the Public Service Commissions Law, be and the same hereby is extended to and including the ....., day of ....., 1908.

Upon written applications of the following named companies, the time within which the annual reports of the said companies should be filed was extended as hereinbelow indicated:

Extension Order No. 748 (see blank form) issued September 30, 1908, extended the time of the following named companies to and including October 20, 1908:  
Atlantic Avenue Elevated Railroad Company;  
Brooklyn City and Newtown Railroad Company;  
Coney Island and Brooklyn Railroad Company;  
De Kalb Avenue and North Beach Railroad Company;  
Ocean Electric Railway Company;  
Prospect Park and Coney Island Railroad Company;  
Richmond Light and Railroad Company;  
Southfield Beach Railroad Company;  
Staten Island Midland Railway Company;  
Third Avenue Railroad Company and Frederick W. Whitridge, its Receiver;  
Westchester Electric Railroad Company.

Extension Order No. 748-a (see blank form), issued October 2, 1908, extended the time of the following named companies to and including October 12, 1908:  
Bleecker Street and Fulton Ferry Railroad Company;  
Central Crosstown Railroad Company of New York;  
City Island Railroad Company;  
Edenwald Street Railway Company;  
Jerome Park Railroad Company;  
Marine Railway Company;  
Pelham Park Railroad Company;  
Second Avenue Railroad Company in the city of New York;  
Thirty-fourth Street Crosstown Railroad Company;  
Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company.

Extension Order No. 748-b (see blank form), issued October 13, 1908, extended the time of the following named companies to and including October 20, 1908:  
Broadway and Seventh Avenue Railroad Company;  
New York Connecting Railroad Company;  
Van Brunt Street and Erie Basin Railroad Company;

and the time of the following named companies to and including October 31, 1908:  
 Bronx Traction Company;  
 Dry Dock, East Broadway and Battery Railroad Company, and Frederick W.  
 Whitridge, its receiver;  
 Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Com-  
 pany, and Frederick W. Whitridge, its receiver;  
 Kingsbridge Railway Company;  
 Union Railway Company.

Extension Order No. 748-c (see blank form), issued October 20, 1908, extended  
 the time of the following named companies to and including November 9, 1908:  
 Interborough Rapid Transit Company;  
 Manhattan Railway Company;  
 New York City Interborough Railway Company;  
 New York and Queens County Railway Company;

and the time of the following named companies to and including October 31, 1908:  
 Brooklyn City and Newtown Railroad Company;  
 Coney Island and Brooklyn Railroad Company;  
 DeKalb Avenue and North Beach Railroad Company;

Extension Order No. 748-d (see blank form), issued October 23, 1908, extended  
 the time of the following named companies to and including October 31, 1908:  
 Fort George Street Railway Company;  
 New York Connecting Railroad Company;

and the time of the following named company to and including November 1, 1908:  
 Ocean Electric Railway Company.

Extension Order No. 748-e (see blank form), issued October 30, 1908, extended  
 the time of the following named company to and including November 9, 1908:  
 Fort George Street Railway Company.

Extension Order No. 748-f (see blank form), issued November 24, 1908, extended  
 the time of the following named company to and including November 30, 1908:  
 Southfield Beach Railroad Company.

Extension Order No. 748-g (see blank form), issued November 27, 1908, extended  
 the time of the following named companies to and including November 30, 1908:  
 Bronx Traction Company;  
 Dry Dock, East Broadway and Battery Railroad Company;  
 Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company;  
 Kingsbridge Railroad Company;  
 Southern Boulevard Railroad Company;  
 Third Avenue Railroad Company;  
 Union Railway Company of New York city.

Extension order No. 748-h (see blank form), issued November 27, 1908, extended  
 the time of the following named company to and including November 30, 1908:  
 Hudson and Manhattan Railroad Company.

### New York, Westchester and Connecticut Traction Company — Place of filing annual reports.

#### OPINION OF COUNSEL.

*Public Service Commission for the First District:*

May 8, 1908.

Sirs:—I have the Secretary's letter of the 4th inst. asking for information as  
 to whether the annual report of the New York, Westchester & Connecticut Trac-  
 tion Company should be filed with the Commission or with the Commission for  
 the Second District. The letter states that this company owns three miles of track  
 between Mount Vernon and North Pelham, and therefore entirely within the Second  
 District, but that on the other hand the company is controlled and its line is  
 operated by the New York City Railway Company, a company within the First  
 District.

Section 46 of the Public Service Commissions Law provides that "Any street  
 railroad corporation operating a line partly within the First District and partly  
 within the second district shall report to the commission of the First District;  
 but the Commission of the Second District may, upon reasonable notice, require a  
 special report from such street railroad corporation." I find no other provision  
 expressly prescribing the place of filing the annual reports of street railroad  
 corporations, but from the language used it is to be inferred that the meaning is  
 that a street railroad corporation operating a line located wholly within the  
 First District shall report to the Commission of the First District, and that a

street railroad corporation operating a line located wholly within the Second District shall report to the Commission of the Second District.

The language used clearly indicates that the place of filing the annual report of any street railroad corporation is determined by the location of the line of road operated and not by the location of the office of the corporation controlling or operating the line. Assuming, therefore, that the line mentioned is wholly within the Second District, as stated in the letter referred to, I am of the opinion that this company's annual report should be filed with the Commission of the Second District.

(Signed) Respectfully yours,  
GEORGE S. COLEMAN,  
*Counsel to the Commission.*

**Hudson and Manhattan Railroad Company.—Annual and other reports of companies engaged in interstate commerce.**

\* [The Commission has power to require reports from companies engaged in interstate commerce.]

Questions were raised by the Hudson and Manhattan Railroad Company operating the tunnel railroad between New York and New Jersey as to the power of the commission to require reports.

The counsel to the Commission rendered the following opinions in the matter:

## OPINION OF COUNSEL.

*Public Service Commission for the First District:* August 11, 1908.

SIRS:—I am in receipt of your Secretary's letter of August 10th respecting the Hudson and Manhattan Railroad Company, asking with reference to the powers and jurisdiction of the Commission over that company, and stating that orders of the Commission calling for reports of accidents, records of stockholders, information as to car motors and some other orders of the Commission are not being complied with by the company, and that the company suggests that it is subject to the jurisdiction of the Interstate Commerce Commission and not of the Public Service Commission; that the company wishes promptly to comply with the orders of the Public Service Commission, so far as it is subject to its jurisdiction, but thinks that the question of jurisdiction should be determined first to avoid complication and embarrassment of conflicting orders by the two Commissions.

The Hudson and Manhattan Railroad Company is the holder of franchise rights granted under the Rapid Transit Act by the former Board of Rapid Transit Railroad Commissioners to construct and operate railroads in the city of New York: One under certificates dated July 10, 1902, and February 2, 1905, as amended, by way of Morton street, Christopher street and Sixth avenue to Thirty-third street; the other under a certificate dated November 24, 1903, under Cortlandt, Dey and Fulton Streets, including terminals and approaches. The company has constructed and is operating the former road and has stations at Christopher street, Fourteenth street, Nineteenth street and Twenty-third street, and authority for stations in Sixth avenue at Ninth street, Twenty-eighth street and Thirty-third street which are not completed. The company is receiving and delivering passengers at stations and between stations within the city. The certificates mentioned giving these franchises contain clauses which vest in the Commission the right of inspection and examination when necessary, and the Morton street and Sixth avenue franchise now in operation provides that nothing therein shall be deemed to diminish or affect the sanitary or police jurisdiction which the public authorities shall lawfully have over property in the city.

I am of the opinion that the Public Service Commission for the First District has jurisdiction over this company, and that the orders mentioned must be complied with. The fear expressed that if reports are rendered conflicting orders may be given by the State and by the federal authorities may be disregarded. It is to be assumed that the Commission will act within its jurisdiction in issuing any of its orders. It is also difficult to see how reports can be withheld by the company, because the Interstate Commerce Commission may have some jurisdiction. A demand for reports of a company operating within this state

"is in no just sense a regulation of commerce. It does not undertake to impose any tax upon the company, or to restrict the persons or things to be carried, or to regulate the rate of tolls, fares or freight."

**Chicago, Milwaukee and St. Paul Railway Company vs. Solan,  
169 U. S. 138.**

\* See footnote, page 9.

It is simply an exercise of the power of visitation which the State possesses over corporations and especially over railroad corporations, by virtue of its police power. It is merely an exercise of the power which remains in the State.

"to create and to regulate the instruments of such (interstate) commerce, so far as necessary to the conservation of the public interests."

Louisville & Nashville Railroad Company vs. Kentucky, 161 U. S. 702.

There is no doubt that subject to action of Congress the State can require this railroad to guard against accidents: It can regulate the holding of stock; it can insist upon adequate appliances, as car bodies and motors to transport the traffic; it can require that no corporation operate a railroad without a franchise. The mere fact that a corporation is engaged in interstate commerce does not permit it to usurp special franchises rendering reports, even on the same matters and for the same purposes, to different bodies.

Inasmuch as these orders of the Commission do not directly regulate interstate commerce, and in fact hardly even indirectly affect it, but are simply regulations upon the instruments of interstate commerce made in reliance upon the reserved police power not granted to Congress and not incompatible with any ruling that Congress has made under its power to regulate commerce, and as they certainly have less effect upon commerce than many other regulations of states heretofore upheld by the courts, like harbor regulations and laws concerning pilots, the orders would seem to me to be in aid of commerce and not an interference with it, and should be obeyed.

Respectfully yours,  
(Signed) GEO. S. COLEMAN,  
Counsel to the Commission.

\* [Reports of railroads lying partly without State and partly within First District must be made to Commission for First District.—Such reports must cover interstate, as well as intrastate, business.—Commission may require such report from Hudson-Manhattan Railroad Company.—This is not interference with interstate commerce.]

#### OPINION OF COUNSEL.

*Public Service Commission for the First District:* November 19, 1908.

Sirs.—I am in receipt of the Secretary's letter of the 14th inst., requesting me to render an opinion as to whether the Commission should properly require an annual report of its operation from the Hudson-Manhattan Railroad Company. The letter states that the company is claiming that because it does an interstate business the Commission can go no further than ask for a report as to the business done within the State.

The provisions of law regarding annual reports are contained in section 57 of the Railroad Law and section 46 of the Public Service Commissions Law. Section 57 of the Railroad Law is still in force, except in so far as it is modified by the provisions of the Public Service Commissions Law. This section provides that:

"Every person or corporation owning, leasing, operating, or in possession of a railroad, wholly or partly, in this State, shall make an annual report to the board of railroad commissioners of its operations for the year ending with June thirtieth, and of its condition on that day \* \* \*".

Section 46 of the Public Service Commissions Law makes no mention of railroads not wholly within the State. However, these two sections, when read together, clearly require reports of railroads not wholly within the State, but lying partly without the State and partly within the First District, to be made to the Commission for the First District, and that such reports shall cover interstate as well as intrastate business. The Commission for the First District, therefore, has power by order, to require the Hudson-Manhattan Railroad Company to file with the Commission a full report covering its business without the State, as well as that within the State.

It is difficult to see how a report could show the condition of a company unless the entire business of the company should be covered by the report.

In this connection I would refer you to my letter to you of August 11, 1908, which had reference to the noncompliance by this company with the orders of the Commission, calling for reports of accidents, records of stockholders, information as to car motors and certain other orders of the Commission. The company claimed that it was subject to the jurisdiction of the Interstate Commerce Commission and not of the Public Service Commission and expressed the fear that if reports should be rendered to both Commissions, conflicting orders might be given by the State and by the Federal authorities. The claim now made is substantially the same as the one previously made, except that it seems the company now concedes that this Commission has jurisdiction to require reports as to business done within the State. In the letter referred to, I wrote in part as follows:

"I am of the opinion that the Public Service Commission for the First District has jurisdiction over this company, and that the orders mentioned must be complied with. The fear expressed that if reports are rendered conflicting orders may be given by the State and by the Federal authorities may be disregarded. It is to be assumed that the Commission will act within its jurisdiction in issuing any of its orders. It is also difficult to see how reports can be withheld by the company, because the Interstate Commerce Commission may have some jurisdiction. A demand for reports of a company operating within this State

\* See footnote, page 9.

'is in no just sense a regulation of commerce. It does not undertake to impose any tax upon the company, or to restrict the persons or things to be carried, or to regulate the rate of tolls, fares or freight.

*Chicago, Milwaukee and St. Paul Railway Company vs. Solan,  
160 U. S., 138.'*

"It is simply an exercise of the power of visitation which the State possesses over corporations and especially over railroad corporations, by virtue of its police power. It is merely an exercise of the power which remains in the State

'to create and to regulate the instruments of such (interstate) commerce, so far as necessary to the conservation of the public interests.

*Louisville & Nashville Railroad Company vs. Kentucky, 161 U. S., 702.'*

"There is no doubt that subject to action of Congress the State can require this railroad to guard against accidents; it can regulate the holding of stock; it can insist upon adequate appliance, as car bodies and motors to transport the traffic; it can require that no corporation operate a railroad without a franchise. The mere fact that a corporation is engaged in interstate commerce does not permit it to usurp special franchises for that purpose. There is nothing inconsistent or impossible in rendering reports, even on the same matters and for the same purposes, to different bodies.

"Inasmuch as these orders of the Commission do not directly regulate interstate commerce, and in fact hardly even indirectly affect it, but are simply regulations upon the instruments of interstate commerce made in reliance upon the reserved police power not granted to Congress and not incompatible with any ruling that Congress has made under its power to regulate commerce, and as they certainly have less effect upon commerce than many other regulations of states heretofore upheld by the Courts, like harbor regulations and laws concerning pilots, the orders would seem to me to be in aid of commerce and not an interference with it, and should be obeyed."

I am of the opinion that the constitutional questions involved are covered by the opinion from which the above quotation has been made.

Respectfully yours,

(Signed)

GEO. S. COLEMAN,

*Counsel to the Commission.*

The Commission thereupon directed the secretary to call the attention of that company to the fact that this Commission insisted upon obedience to its orders and requests.

The Hudson & Manhattan Railroad Company assented to the correctness of the opinions of counsel by filing reports in accordance therewith.

\* [Annual reports.—Railroad and street railroad corporations.—Duty to render annual reports rests on corporation.—Remedies for default.—Persons in office when report is due must file it.—Receivers must render report if in charge when it is due.—Report of lessor road whose books are held by receivers of lessee road.—Power to mandamus federal receivers.]

#### OPINION OF COUNSEL.

*Public Service Commission for the First District:*

October 29, 1908.

Sirs.—I have the Secretary's letter of the 22d ult., asking to be advised as to certain questions which have arisen with the Statistician of the Commission with reference to reports for the year ending June 30, 1908. I shall take up these questions in their order.

1. "Where there has been a complete change of directors and officers of a company during the year, what is the power of the Commission to compel the present officers to make a report for the entire year?"

The Public Service Commissions Law requires that the annual report for the year ending June 30th in any year be filed on or before the 30th day of September in that year. The obligation rests upon the corporation. If the report is not filed on or before the date specified, the corporation will forfeit \$100 for each day's delinquency and may be compelled by mandamus to file the report.

Pub. Serv. Com. L. § 46.

Pub. Serv. Com. L. § 57.

Any order or proceeding would be against the corporation, and it would not be necessary for the Commission to acquaint itself with or take any notice of any change in the personnel of the directors or officers, except for the purpose of enabling it to get service on the corporation. However, it may be observed, that, as the corporation is an artificial being and can act only through its officers, the performance of any duty imposed upon the corporation must necessarily devolve upon the officers of the corporation; and where, as in this case, a particular period of time is specified within which the duty shall be performed, the duty must be performed by the persons in office during that period. That there may have been an entire change of officers during the year can make no difference.

\* See footnote, page 9.

2. "Where receivers have been appointed during the year, what is the power of the Commission to compel the receivers to make a report for the entire year?"

Section 46 of the Public Service Commissions Law provides that annual reports must be filed by railroad and street railroad corporations. Section 2 of that law defines these terms, when used in that law, as including the receivers of such corporations. Hence where receivers have been appointed, they may be required to comply with the provisions relating to annual reports. If they are in charge of the affairs of the corporations at the time when the annual report is required to be filed, the report for the entire year must be filed by them. If they fail to file it, the same remedies are available as are mentioned in answer to question No. 1.

See Elliott on Railroads, § 578.

3. "Where the lessor road is not in the hands of a receiver, but its books are held by receivers of the lessee road because they were in the files of the lessee road, what is the power of the Commission to compel officers of the lessor road or of the receivers to make a report for the entire year?"

If the lessor road is still run by the receivers for the benefit of the lessee road it is the duty of the receivers to make the report, and they may be compelled by mandamus to make the same.

Peckham et al. vs. Dutchess County Railroad Company, 145 N. Y. 385.

Pub. Serv. Com. L., § 57.  
Elliott on Railroads, § 461.  
Elliott on Railroads, § 578.

If, however, the lease has been abrogated or has expired, and the lessor road is no longer run by the lessee road, it is the duty of the lessor company to make the report, and it may be compelled by mandamus to do so. That the lessor's books are still held by the receivers of the lessee road can make no difference. Possession of the books could be easily secured, by replevin, if necessary.

The question may arise as to the power of the Commission to proceed by mandamus against receivers appointed by a Federal court. Upon this point I would refer you to my letter of March 21, 1908, which shows that State statutes regarding the operation and management of the property in the hands of such receivers will be enforced. The rule seems to be that any statute which amounts to a reasonable State regulation and which does not authorize any interference with the property in the hands of the receivers, will be enforced. As the requirements regarding the filing of annual reports does not in any way interfere with the property of the corporation in the hands of the receivers, the requirement will be enforced. In my opinion, therefore, mandamus will lie against the receivers to compel the filing of the annual report. See the letter above mentioned and cases therein cited.

The provisions of section 46 of the Public Service Commissions Law apply to "common carriers," but I understand that the questions contained in the Secretary's letter were not intended to cover express companies, car companies, sleeping-car companies, freight companies or freight line companies, included in the definition of common carriers (§ 2), but were confined to railroad and street railroad corporations.

Respectfully yours,  
(Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

[As to reports to be made by companies in the hands of receivers, see Receivers.]

### Gas and Electrical Corporations.—Form of annual reports.

Final Order No. 728.  
Final Order No. 851.  
Extension Order No. 812.  
Extension Order No. 812a.  
Extension Order No. 812b.  
Extension Order No. 812c.  
Extension Order No. 812d.

In the Matter

of the

Form of report to be filed by GAS and ELECTRIC ORDER No. 728.  
CORPORATIONS subject to the jurisdiction of the September 22, 1908.  
Public Service Commission for the First District  
in accordance with section 66 of the Public Service  
Commissions Law.

The Public Service Commission for the First District being authorized and required by section 66 of the Public Service Commissions Law to prescribe the

form of report required under said act to be made by gas and electrical corporations subject to its jurisdiction; it is hereby

*Ordered*, That the form for reports of all gas and electrical corporations subject to the jurisdiction of the Commission, as the terms are defined in section 2 of the Public Service Commissions Law, for the six months ending December 31, 1907, as the said form has been prepared by the Chief Statistician of the Commission be and the same hereby is approved and prescribed by the Public Service Commission for the First District; and it is further

*Ordered*, That every such corporation shall on, or before October 31, 1908, make and file with the Commission a report in said form for the six months ending December 31, 1907; and it is further

*Ordered*, That the Secretary of this Commission serve upon each of the said corporations on or before September 30, 1908, in the manner prescribed by law a certified copy of this order, and two copies of the form hereby prescribed.

#### ORDER No. 851, MODIFYING FORM OF ANNUAL REPORT.

November 20, 1908.

An order of the Commission, No. 728, having been made and filed herein on or about the 25th day of September, 1908, approving and prescribing a form of annual report to be filed by all gas and electrical corporations subject to the jurisdiction of the Commission in accordance with the provisions of section 66 of the Public Service Commissions Law, and a certified copy of said order with two copies of the form therein prescribed having been duly served upon all such gas and electrical corporations, and it appearing that certain modifications should be made in said form so prescribed,

Now, on motion made and duly seconded, it is

*Ordered*, That the form of annual report for gas corporations and electrical corporations within the jurisdiction of the Public Service Commission for the First District, as prescribed by Order No. 728 above mentioned, be and the same hereby is, modified in accordance with the following schedule of modifications:

#### SCHEDULE OF MODIFICATIONS.

- Page 4. Strike out the last sentence of inquiry No. 1.
- Page 4. Omit inquiry No. 4.
- Page 5. Omit inquiry No. 1.
- Page 6. In inquiry No. 1, after the word "meeting," insert "for the election of directors."
- Page 7. Omit inquiries Nos. 5 and 6.
- Page 8. Omit inquiries Nos. 1, 2 and 3.
- Page 10. This inquiry shall be made to apply only to the supply of gas.
- Page 16. Strike out entire page.
- Page 17. Strike out entire page.
- Page 22. Omit inquiries Nos. 1, 2, 5 and 6.
- Page 23. Omit inquiries Nos. 1 and 2.
  - Add to inquiry No. 5 the words "and ordinary surety bonds and undertakings on appeals in court proceedings."
  - Add to inquiry No. 6, "nor does it include ordinary surety bonds or undertakings on appeals in court proceedings."
- Page 40g. Heading of column 3 at top of page should read, "Number of cubic feet sold in half year ended December 31, 1907" (instead of 1906).
- Page 41e. Line 38, "miscellaneous" should include *damages* and *depreciation*, which items should be further shown separately in foot notes.
- Page 42. Headings of the last two columns under "Rents Payable" should read "Amounts charged," not "changed."
- Page 45. In second line from top of page, "\$20" should be substituted for "\$10."
- Page 48. In the schedule of "Other Rents Accrued — Debits," the columns headed "Rate of Rent Per Month" and "Number of Months Occupied" may be omitted.
- Pages 50 and 51. Omit column "Average number during six months."
  - The data as to "Service Rendered during the half year" will not be required of corporations that have not kept their accounts in the form assumed by the inquiry.
  - "Greatest number at any time in six months," "Least number at any time in six months," "Number of appointments during six months."
  - "Total amount paid July 1 to December 31, 1907," need not be given for individual occupations, but must be given for classes of employees noted upon lines 1, 16, 42, 66 and 67.
  - The "Average rate," "Highest rate" and "Lowest rate" may be stated on the basis of the payrolls for the last week in December.
- Page 56. Omit under "Accidents" lines 25-33, both inclusive.

Orders extending the time within which certain gas and electric corporations subject to the jurisdiction of the Public Service Commission for the First

District should file their reports in accordance with Public Service Commissions Law, section 66, and Order No. 728 of the said Commission, were issued in substantially the following form, to which reference will be hereinafter made:

(Blank Form)

In the Matter of the <b>Form of report to be filed by GAS AND ELECTRIC CORPORATIONS subject to the jurisdiction of the Public Service Commission for the First District, in accordance with Section 66 of the Public Service Commissions Law.</b>	<b>EXTENSION ORDER</b> No. ——.
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An order of the Commission, No. 728, having been made herein on or about the 22nd day of September, 1908, approving and prescribing a form of report to be filed by all gas and electric corporations within the jurisdiction of the Commission for the six months ending December 31, 1907, and applications in writing having been received from certain of such corporations requesting an extension of the time prescribed,

Now, on motion made and duly seconded, it is

*Resolved*, That the time within which the gas and electric corporations below mentioned shall file their reports for the six months ending December 31, 1907, be and the same hereby is extended to and including the ..... day of ..... 1908.

Extension Order No. 812 (see blank form) issued October 30, 1908, extended the time of the following named companies to and including November 16, 1908:

- Astoria Light, Heat and Power Company;
- Brooklyn Union Gas Company;
- Brush Electric Illuminating Company;
- Central Union Gas Company;
- Consolidated Gas Company;
- Edison Electric Illuminating Company;
- Flatbush Gas Company;
- Jamaica Gas Light Company;
- Kings County Lighting Company;
- New Amsterdam Gas Company;
- Newtown Gas Company;
- New York and Queens Electric Light and Power Company;
- New York and Queens Gas Company;
- New York Edison Company;
- New York Mutual Gas Light Company;
- Northern Union Gas Company;
- Richmond Hill and Queens County Gas Light Company;
- Standard Gas Light Company of the City of New York;
- United Electric Light, Heat and Power Company;
- Woodhaven Gas Light Company;

and the time of the following named companies to and including November 9, 1908:

- Bronx Gas and Electric Company;
- Queens Borough Gas and Electric Company.

Extension Order No. 812A (see blank form), issued November 6, 1908, extended the time of the following named companies to and including November 16, 1908:

- Amsterdam Electric Light, Heat and Power Company;
- Kings County Electric Light and Power Company;

and the time of the following named company to and including November 9, 1908:

- New York and Richmond Gas Company.

Extension Order No. 812B (see blank form), issued November 13, 1908, extended the time of the following named companies to and including November 30, 1908:

Amsterdam Electric Light, Heat and Power Company;  
Astoria Light, Heat and Power Company;  
Brooklyn Union Gas Company;  
Brush Electric Illuminating Company;  
Central Union Gas Company;  
Consolidated Gas Company of New York;  
East River Gas Company of Long Island City;  
Edison Electric Illuminating Company of Brooklyn;  
Flatbush Gas Company;  
Jamaica Gas Light Company;  
Kings County Electric Light and Power Company;  
New Amsterdam Gas Company;  
Newtown Gas Company;  
New York Edison Company;  
New York Mutual Gas Light Company;  
Northern Union Gas Company;  
Richmond Hill and Queens County Gas Light Company;  
Standard Gas Light Company of the City of New York;  
United Electric Light and Power Company;  
Woodhaven Gas Light Company.

Extension Order No. 812C (see blank form), issued November 20, 1908, extended the time of the following named company to and including November 30, 1908:

New York and Queens Electric Light and Power Company.

Extension Order No. 812D (see blank form), issued December 29, 1908, extended the time of the following named company to and including January 15, 1909:

East River Gas Company of Long Island City.

### Electrical Corporations.—Prevention of discrimination and unreasonable preference.

Opinion of Counsel.  
Hearing Order No. 822.  
Opinion of Commissioner Maltbie.  
Final Order Case 822.

#### OPINION OF COUNSEL.

Hon. MILO R. MALTBIE, *Commissioner*.

October 30, 1908.

SIR.—In your letter of October 10, 1908, inclosing provisions desired to be incorporated in two orders, one relating to discrimination and unreasonable preferences by electrical corporations, and the other to the filing of schedules by electrical corporations, you asked to be advised.

“First. Whether the inclosures could properly be incorporated into orders by the Commission, and

“Secondly. Whether these are in the proper form.”

As to the first inclosure, a copy of which is herewith transmitted, marked I, I am of the opinion that the provisions marked sections 1, 2 and 3(c), which relate specifically to discrimination and unreasonable preference, may properly be incorporated in an order, since they are within the principle that electrical lighting corporations are subject generally to the rules which govern common carriers and may not discriminate between their customers.

*Armour Packing Company vs. Edison Electrical Illuminating Company of Brooklyn, 115 App. Div. 51.*

The headnote in that case reads (51):

“An electric lighting company which uses the public streets and highways is a public service corporation and is subject generally to the rules which govern common carriers and may not discriminate between its customers.”

The Court stated the principle as follows, page 54:

“It is said in 10 American and English Encyclopedia of Law (2d edition), 869: ‘Electric lighting companies being given the use of the streets and public ways for the erection of such appliances as are necessary for the maintenance of their works, and having the right to acquire the use of lands for their business by writs *ad quod damnum*, are quasi-public corporations, and it is, therefore, their duty to furnish the city’s inhabitants with electric light and to do so upon the terms and conditions common to all and without discrimination. They cannot fix a variety of prices or impose different terms and conditions according to their caprice or whim.’

“The justice of this rule cannot well be doubted.”

As to the provisions in the first inclosure marked section 3 (a) and (b) and section 4, which declare specifically that the companies shall not deviate from the rates filed with the Commission, I am of the opinion that these provisions may be incorporated in an order by virtue of the powers over electrical corporations conferred by section 66 of the act, subdivisions 1, 5 and 9, and by section 4 of the act, and because of the law as to discrimination established in the Armour Packing Company case above cited.

By section 66 of the act, subdivision 1, the Commission has "general supervision" of electrical companies.

By section 66, subdivision 5, the Commission is authorized to

- (a) Examine all persons, corporations and municipalities under its supervision;
- (b) Keep informed as to the methods employed by them in the transaction of their business; and
- (c) See that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law.

Section 66, subdivision 9, confers power on the Commission

To examine the books and affairs of any such corporation, persons or municipalities, and to compel the production before it of books and papers pertaining to the matters being investigated by it.

Section 4 confers on each Commission

"All powers necessary or proper to enable it to carry out the purposes of this act."

With regard to the second inclosure, a copy of which is herewith transmitted, marked II, I am of the opinion that the Commission has power to incorporate in an order the provisions checked thus ✓, but that the provisions inclosed in parentheses are of doubtful propriety in their present form.

The purpose of proposed section 7(a), first sentence, is to insure to the Commission and the public thirty days' notice of all schedules. I would suggest eliminating this negative provision and incorporating the affirmative provision for thirty days' notice in section 1, as interlined in the accompanying draft. The Commission having incorporated section 1 in an order, its remedy in case of failure by the corporation to obey such order is provided for by proceedings to collect penalties under section 73 of the act.

In section 6 (a) and (b) I suggest the insertion of the words "for each specific class of business."

As to the provisions in section 9 (b) and (c) that the companies give to all applicants copies of all schedules, I think that such free distribution might be properly required if necessary to promote the security and accommodation of the public and if not unduly expensive. The requirement in its present form might subject a corporation to unnecessary expense and annoyance. If the purpose of the provision could be effected and at the same time a reasonable discretion left to the company as to the persons entitled to its schedules, I think the interest of the public would be sufficiently secured. I would suggest a modification somewhat as indicated by the changes proposed in the copy.

As to the provision in section 10(a) that all orders of the Commission in the matters specified be promulgated by the companies, I doubt the power of the Commission to order such publication.

I have suggested an amendment to section 11(g) in line with the proposed changes in section 7(a) and section 71.

Respectfully yours,  
(Signed)

GEO. S. COLEMAN,  
Counsel to the Commission.

#### ORDER FOR HEARING No. 822.

November 6, 1908.

*Ordered*, That a hearing be held by the Public Service Commission for the First District on Friday, November 13, 1908, at 2:30 P. M., at the rooms of the Commission, 154 Nassau street, New York city, for the purpose of determining whether, in order to prevent discrimination and unreasonable preference by electrical corporations, an order should be issued by the Commission, containing substantially the provisions against discrimination and unreasonable preference set out in the draft hereto annexed.

*Ordered*, Further, that a copy of this order, with the draft annexed, be served on all the electrical corporations within this district at least four days before the date fixed for hearing.

#### HEARING ORDER ON DISCRIMINATION AND UNREASONABLE PREFERENCE BY ELECTRICAL CORPORATIONS.

Section 1. No electrical corporation shall directly or indirectly, by any special rate, rebate, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered in the supplying of electricity for light, heat or power, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service in the supplying of electricity under the same or substantially similar circumstances and conditions.

Section 2. No electrical corporation shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to

any particular description of traffic in any respect whatsoever or subject any particular person or corporation or locality or any particular description of service to any prejudice or advantage in any respect whatsoever.

Section 3. (a) No electrical corporation shall charge, demand, collect or receive a greater or less or different compensation for supplying electricity for light, heat or power than the rates and charges applicable to such service as specified in its schedules filed with the Public Service Commission and in effect at the time; (b) nor shall any electrical corporation refund or remit in any manner or by any device, any portion of the rates or charges so specified; (c) nor extend to any person or corporation any privilege or facilities in connection with such service, except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

Section 4. No electrical corporation, or any officer or agent thereof, or any person acting for or employed by it shall assist any person or corporation to obtain electricity for light, heat or power at less than the rates then established and in force in accordance with the schedules filed with the Public Service Commission for the First District and published in accordance with the order of the said Commission.

Hearing held November 13th.

#### OPINION OF COMMISSION.

(Adopted December 18, 1908.)

#### COMMISSIONER MALTBIE:—

I beg to submit the following report of progress upon a group of matters considered in the general investigation into electric lighting matters now being conducted:

Following the adjustment of the breakdown-service question, I took up the matters relating to contracts, rates, discrimination, regulations of supply, etc. Each of these subjects is closely related to the others and they were considered together because of their close relationship. As the purpose of the investigation has been not only to obtain information regarding existing conditions upon which orders might be issued by the Commission, but also to remove the cause of complaints made by consumers to the Commission, I have discussed with the representatives of the various companies different methods for improving the situation, and urged upon them the advisability of voluntarily changing their practices where their practices have been the cause of dissatisfaction to the public. In a number of instances changes which have greatly benefited the consumer have already been made and others are under consideration.

#### RETAIL LIGHTING CONTRACT.

One of the first subjects considered was the form and contents of the retail lighting contract. Consumers have objected to the requirement of certain companies that the contract should be made for a minimum term of a year, to the insistence upon minimum charges or guarantees, to the complicated form of the contract and to the regulations imposed, some of which were not in the contract so that in certain instances the company could change, amend or extend them without notice to the consumer; but he was supposed to obey them nevertheless.

After the actual facts had been developed and it had appeared that the consumers had in many instances reasonable ground for complaint, the companies were urged, (1) to simplify their form of contract, (2) to make it more like an application, (3) to standardize this form so that every company would be using the same form so far as possible, (4) to omit the minimum term of one year and allow the contract to be cancelled by either party upon a short notice, (5) to reduce to a minimum the regulations regarding the use of service and the relationship of the consumer to the company, and (6) to omit the requirement of a guarantee or the collection of a minimum charge in case the amount of current used by the consumer did not equal the guaranteed use.

All of these suggestions, with the exception of the last, were accepted by all of the companies and are now in operation. The ordinary consumer of current, commonly known as the retail lighting consumer, now has merely to sign an application for service which, when finally approved, becomes a contract. It is in the

form of a small card and is substantially the same for every one of the companies distributing current within the First District. The contract may be terminated and the use of electricity discontinued by any consumer upon three days' notice. The regulations covering the relationship of the consumer to the company, so far as they are a matter of contract, appear in full upon the back of the application and are simpler than those which formerly existed in many instances.

Not all of the companies have accepted the suggestion that guarantees and minimum charges be done away with, but at the present moment five companies out of the nine have done so. The results of the removal of guarantees have been so satisfactory in the cases where they have been tried since this investigation began, that I am still hoping the other companies will voluntarily accede to the suggestion and thus do away with the necessity of taking the matter up formally. Experience seems to show that the income from minimum charges over and above the value of the current supplied is more than offset by the increased consumption of current due to the increase in the number of consumers where minimum charges have been eliminated. Many persons seriously object to the minimum charge and are deterred from introducing electricity because of the fear that the guarantees will be so much greater than their use and because of the natural dislike of every person to pay for something he has no tangible evidence of receiving. Mr. McGowan of the Flatbush Gas Company has testified that he is greatly pleased with the results following the elimination of their minimum charge for retail users, and asserts that the company has been financially benefited by adopting the suggestions of the Commission.

One of the companies—the Brooklyn Edison Company—has one form of contract for retail lighting, but has so many different schedules for guarantees that there are practically eight different contracts from which the small consumer may select one. If these guarantees were done away with, the situation would be very greatly simplified, and it is my opinion that the interests of the consumer, and probably those of the company, would be benefited by their removal.

#### WHOLESALE CONTRACTS.

Besides the retail lighting contract, each company has from one to nine classes of contracts or rates which are in general use. The smaller companies usually have few in number, ordinarily from one to four, according to the kind of service desired; such as, for example, are lamp lighting contract, hotel or store contract, electric sign contract and power contract, as in the case of the Bronx Gas and Electric Company. Two companies—the Richmond Light and Railroad Company and the Queens Borough Gas and Electric Company—have but two general forms of contract one for retail lighting and one for power. The New York and Queens Electric Light and Power Company has four, the Flatbush Gas Company three, (power, sign lighting and battery charging), and the Westchester Lighting Company, two forms besides the retail lighting contract. The other three companies—large companies—have several.

The variety of contracts, rates and conditions which obtain where the large companies are supplying current is due largely to the attempt upon the part of these companies to secure all classes of business and to secure it at a rate and upon such conditions as will induce the various classes of consumers to use electricity instead of some other method of lighting or power generation, or to take current from a central station in preference to operating their own private plant. Naturally, if a company is to offer a rate or method of supply which will just bring to it, and no more, a certain class of business, it must have a contract adapted to this class of consumers. As each class will have its own peculiar needs and conditions, this will lead in a large city to a multiplicity of rates and contracts, if the idea is carried to its logical conclusion.

## OBJECTIONABLE FEATURES.

At first glance it would seem that such a variety would be beneficial and satisfactory to the consumers generally, but it inevitably develops certain objections which are apt to become serious in a considerable number of cases. The first is that under such conditions rates are likely to be valued upon the principle of charging what the traffic will bear and often without due regard to the cost of furnishing the service. This may lead, and does in some cases, to a fixing of price to certain consumers at a point below the cost of supply and to other consumers much above the cost of the service. Of course, in practically every private business, certain consumers are supplied at less than cost to some extent; but it becomes a serious matter when the number of rate schedules is large and each one is fixed at a point which will just secure the business.

An instance of such condition is furnished by the contract of the New York Edison Company. In the borough of Manhattan a consumer who wishes to secure a lower rate than the flat ten-cent rate per k. w. h. must guarantee, and pay for if he does not use, an average of 2000 k. w. h. per month for ten months out of every year and also a use equivalent to two hours' average daily use of his connected installation. If he will do this, he will pay ten cents per k. w. h. for the first four hours' average daily use of connected installation and five cents for all current above such average use. In the borough of the Bronx, the consumer who wishes to get a lower rate than ten cents is required to guarantee a use of only 1250 k. w. h. per month for ten months of each year and one hour's average daily use. If he gives this guarantee, which is much lower than is required of consumers living in Manhattan, he secures a lower rate than in Manhattan, as he pays ten cents per k. w. h. for the first two hours' average daily use, seven and one-half cents per unit for from three to four hours' average daily use and five cents per unit for all beyond this amount; and yet, owing to the difference in conditions of supply, it probably costs the company less to supply current in Manhattan than in the Bronx.

A similar condition exists when one compares the special wholesale contract in use in Manhattan with the Bronx special wholesale contract, the guarantee in the Bronx being one-half the guarantee in Manhattan.

The second feature, which has been the cause of many complaints and of considerable annoyance, judging from the complaints made to the Commission, is that a variety of contracts and schedules of rates makes it extremely difficult for many consumers to tell what form of contract or schedule would be most advantageous to them. Indeed, it usually happens that the consumers who are upon the border line between any two or more contracts are not only unable to tell which is most advantageous to them without securing the services of an expert engineer, but find that for certain months it would be more advantageous for them to have one form of contract and for other months to have another form. But where a contract must be made for a period of years (ordinarily the requirement is from one to five), it is not only difficult to determine which is best but impossible to change when it becomes desirable. Consequently such consumers are obliged to pay more than they should be required to pay.

For example, the United Electric Light and Power Company, which supplies current in Manhattan, has two forms of contract, known as "Wholesale A" and "Wholesale B." These contracts differ, first, in respect to the guarantees required and second as to rates. The consumer who signs "Wholesale A" contract must guarantee 2000 k. w. h. per month for ten months. The consumer who signs "Wholesale B" contract must guarantee 2500 k. w. h.; otherwise the guarantees are the same. By so doing, the second consumer gets a somewhat lower rate. Experience has shown that owing to the slight difference between the guarantees

a consumer may find it to his advantage to be upon "Wholesale A" contract for a part of the time and for another portion to be on "Wholesale B," but as the contract runs for a year, it is impossible for him to change in the meantime or to make a contract for a shorter period than one year. Similar instances might be selected from the schedules of the Brooklyn Edison Company.

These difficulties would be removed if the schedules were simplified and if one form of contract and one schedule of rates were in force. This was brought out in the investigation by the experience of the Westchester Lighting Company, which has but one contract for all power users. This contract contains a schedule of prices with a base rate of 10 cents. As the use increases, the discount from this base rate increases, so that a consumer who averages for a month 1.73 hours' daily use pays 9 cents per k. w. h. for the current consumed. If he doubles his average daily use of his connected installations he pays 8 cents per k. w. h., and so on, with the result that the actual amount paid per k. w. h. ranges from 10 cents to 4 cents, according to use. Under such a schedule the consumer pays in each month according to the use of that month, and is not confronted with the problem of changing his contract with every fluctuation in the amount of current consumed.

Upon the other hand, a difficulty arises if the contracts are few in number and if the guarantees are so large or vary so greatly as to place large gaps between the classes of contracts. If, for example, there is no intermediate schedule between the retail lighting schedule and the wholesale contract requiring the smallest use, the person who uses merely a small amount of current for lighting his apartment will pay the same rate per k. w. h. as the business man who consumes a large amount of current but who is unable to make the guarantee to advantage because his use falls just short of the guarantees.

In other cases the consumer is at loss to know what to do, and is often unable to make a selection which is wise because different schedules have different methods of computing the charge or have varying scales of guarantees.

#### CHANGES RECOMMENDED.

While appreciating the reasons which make it desirable to have contracts and schedules which will meet the demands of the public, it is quite necessary that the forms of contracts should be as simple as possible, as few in number as possible, and so adjusted that the actual amounts paid per k. w. h. will gradually change from the highest rate for small consumption to the lowest rate for large users, while at the same time providing that every class of persons shall be charged an equitable amount and that every person in the same class shall pay at the same rate.

These matters were discussed with the representatives of the companies at some length at the hearings, and some efforts are now being made to reach the condition just outlined and to remove the features objectionable to the public. The New York Edison Company and the United Company will put into force at the beginning of the year a new form of contract combining contracts "Wholesale A" and "Wholesale B." This new form will remove some of the objections now existing and will lower certain rates, but it is not entirely satisfactory; there are certain objectionable features which must still be remedied. I have refrained from suggesting the fundamental principle that should be adopted in preparing such schedules of rates, believing that this privilege, as well as the duty, belongs to the companies and that the Commission should only take such steps as may be necessary to change conditions after complaint has been made and hearings held.

#### SPECIAL CONTRACTS.

Thus far in this report I have been speaking only of the forms of contract that are in general use. The investigation has shown, however, that besides these gen-

eral forms there had been in force a considerable number of special contracts which provide for special rates or contain special clauses. Two of the smaller companies had no special contracts of any sort, but the other seven did have at the time of the investigation. The vast majority of these special contracts did not contain rates which differed essentially from the standard forms, the principal difference in most cases being in the form of a special rider or clause which gives the consumer a privilege not generally given to others. One of the companies had fourteen types of riders, another fifteen, and another eight.

It should not be inferred that all of these riders contained provisions which consumers generally could not have secured. Many of them are inapplicable to the vast majority of cases; but not infrequently the existence of these riders is unknown to the public generally, and they were made a part of the contract only when the consumer insisted upon some special condition or had dickered with the company so long that the company had been obliged to attach the rider to secure the business. The companies which have these special riders or clauses have expressed a willingness, if it were insisted upon, to give them to any consumer who would be benefited; but they have argued that in the process of bargaining it is of advantage to the company to hold these riders in reserve as special inducements in case they are needed. Whatever may have been the justification for the initiation of riders that are not made known generally, the practical result is that many contracts are in existence which contain provisions not to be found in all contracts, and many of these provisions would be of advantage to the consumers who do not now have them.

#### UNIFORMITY OF TREATMENT.

Opinions may differ as to whether the existence of contracts having such special clauses, not to be found in all contracts where applicable, produces discrimination and, therefore, renders such contracts voidable on the ground that they are discriminatory and in violation of the principle that all public service corporations must treat all consumers in a class equally. But it is undoubtedly true that the existence of such special riders has been a cause of some feeling against the companies and of the claim that every consumer is not treated equally. In my opinion such special provisions should not exist, except as between *classes* of consumers, and every person should be fully advised of all schedules of rates, forms of contracts, regulations as to supply and all other important terms, so that he may make his own selection of contract and not be forced or induced to adopt a system of bargaining or dickered in order to secure what some other consumer may have obtained by such means.

Considerable discussion was given to this subject in the course of the investigation and at special hearings upon a proposed form of order. It will undoubtedly be beneficial to the companies and to the consumer to make public all forms of contracts, rates, etc., and to adhere to them strictly until experience shall have shown necessity for a change, and then to make public all changes and to apply them to every one without exception. An order is transmitted herewith for adoption requiring all electrical corporations to file with the Commission and post for public inspection schedules showing all rates of charge, forms of contract and riders applicable thereto. This is practically the same requirement that has been productive of such good results in the field of transportation.

#### DISCRIMINATION.

Besides the contracts which contain special clauses or riders but which do not provide for special rates, the investigation developed that six of the operating companies had contracts in force under which current was being supplied at lower rates than to consumers generally. Some of these contracts were justified by

the companies on the ground that they were experimental and that the special inducements had been offered to persuade certain consumers to take current under special circumstances or for special uses in order that the company might determine by such experiments whether it would be advisable to establish a general rate for such service. As to another class of cases, the companies stated that they would be willing to give the same rates to all other applicants who would meet the conditions of the special contract. In still other cases, however, the companies stated that they would not make the contract with others or allow its general use.

It may be open to question whether the practice of making experimental contracts with a few consumers is proper or improper, and probably this practice has not so far been abused, but it is possible of abuse and ought to be very carefully guarded if it is to be permitted in any case.

As to the second class, it is true that a contract which a company will make with any applicant who meets the conditions cannot ordinarily be considered a discriminatory contract, unless the conditions which separate this class of consumers from others are unreasonable and without justification. In my opinion, the companies should be allowed considerable leeway in arranging their rates and in classifying their consumers, but there is a limit beyond which this cannot be carried without injustice, and the observations made in the preceding pages regarding general contracts apply with equal force here. The principal objection, however, to the few contracts of which I am now speaking is that the failure to make them public has prevented consumers generally from being aware of their existence, and probably has prevented persons from taking advantage of them who would have found it advantageous to do so, if they had known of their existence.

The third class of contracts is, of course, purely discriminatory and in violation of the principle of equal treatment. Such contracts ought not to exist, and it is probable that any consumer of that class who does not have the special rates could go into court and make it impossible for the company to collect the higher rate called for in his contract. Fortunately, the number of these contracts is not large and has been steadily decreasing during recent years. In fact, many contracts that were in force when the Commission was created have since been voluntarily cancelled by the companies; others are now being cancelled, and it is probable that within a few weeks they will have been eliminated entirely. In order that the position of the Commission may be defined and well understood, another order is transmitted for adoption which will make illegal all discrimination, undue preference, rebating and special rates.

In this connection, it should be stated that conditions have greatly improved within the last decade. In the early years of the electric lighting industry, the principle was quite generally followed in many cities of establishing any rate which the consumer would pay, and if he were a desirable consumer and could not be induced to use current at one rate, another was made. This was virtually carrying to an absurd limit the principle of charging what the traffic will bear, with the result that consumers in the same class were paying widely varying rates. This system reached its highest development where there were competitive companies and where the scramble for business brought about absurd and unjust conditions. Whatever may have been the results in other directions of the elimination of competition, it certainly has resulted in this case in the removal of discrimination to a considerable degree. The principle is more and more being recognized that all terms and conditions of supply should be public, that equality of treatment should everywhere apply, and that methods and practices should be standardized so that each consumer will be on an equal footing with every other consumer in the same class.

Thereupon the following final order was issued:

In the Matter  
of

An investigation for the purpose of determining whether an order should be issued by the Commission against discriminations and unreasonable preference by electrical corporations.

CASE No. 822, FINAL ORDER.

December 18, 1908.

A hearing having been held in the above-entitled matter before Milo R. Maltbie, Commissioner, on November 13, 1908, pursuant to Hearing Order No. 822; and Albert H. Walker, Esq., having appeared for the Public Service Commission; Messrs. Beardsley & Hemmens, by Henry J. Hemmens, Esq., for the New York Edison Company, the United Electric Light and Power Company, the Brush Electric Illuminating Company and the Consolidated Telegraph and Electrical Subway Company; Mr. J. W. Lieb, Jr., and Mr. Edwards for the New York Edison Company; Mr. W. W. Freeman for the Edison Electric Illuminating Company of Brooklyn, the Kings County Electric Light and Power Company and the Amsterdam Light, Heat and Power Company; Mr. E. H. Rosenquest for The Bronx Gas and Electric Company; Charles F. Mathewson, Esq., Edward J. Paterson, Esq., and Mr. Charles A. Thomas for the New York and Queens Electric Light and Power Company; Mr. Carleton Macy for the Queens Borough Gas and Electric Company; Mr. E. S. Bellows for the Westchester Lighting Company; Mr. Frank W. Smith for the United Electric Light and Power Company; and Mr. Fremont Wilson and Mr. Schreiber having appeared personally; and arguments having been heard, it is

*Ordered:*

Section 1. No electrical corporation shall directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for electricity or any service rendered or to be rendered, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Section 2. No electrical corporation shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of service in any respect whatsoever; or subject any particular person or corporation or locality or any particular description of service to any prejudice or disadvantage in any respect whatsoever; but nothing in this section shall be construed as applicable to contracts with or service rendered to the city or State of New York.

Section 3. No electrical corporation shall charge, demand, collect or receive a greater or less or different compensation for supplying electricity for light, heat or power, or for any service rendered, than the rates and charges applicable to such service as specified in its schedules filed with the Public Service Commission and posted and in effect at the time; nor shall any electrical corporation refund or remit in any manner or by any device any portion of the rates or charges so specified; nor extend to any person or corporation any privileges or facilities in connection with such service, except such as are regularly and uniformly extended to all persons and corporations under the same or substantially similar circumstances or conditions.

Section 4. No electrical corporation, or any officer or agent thereof or any person acting for or employed by it, shall assist any person or corporation to obtain electricity for light, heat or power or to obtain any service at less than the rates then established and in force in accordance with the schedules filed with the Public Service Commission for the First District and published in accordance with the order of the said Commission.

Section 5. This order shall take effect at once and shall continue in force until abrogated or modified by the Commission.

Section 6. Every electrical corporation hereby affected shall notify the Public Service Commission for the First District, on or before December 26, 1908, whether the terms of this order are accepted and will be obeyed.

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**Electrical Corporations.—Regulations prescribing the form and governing the construction and filing of schedules of rates and forms of contracts.**

Opinion of Counsel.

Hearing Order No. 823.

Opinion of Commissioner Maltbie.

Final Order Case 823.

**OPINION OF COUNSEL.**

Hon. MILO R. MALTBIE, *Commissioner.*

October 30, 1908.

SIR.—In your letter of October 10, 1908, inclosing provisions desired to be incorporated in two orders, one relating to discrimination and unreasonable prefer-

ences by electrical corporations, and the other to the filing of schedules by electrical corporations, you ask to be advised:

"First. Whether the inclosures could properly be incorporated into orders by the Commission; and

"Secondly. Whether these are in proper form."

As to the first inclosure, a copy of which is herewith transmitted, marked 1, I am of the opinion that the provisions marked sections 1, 2 and 3 (c) which relate specifically to discrimination and unreasonable preference, may properly be incorporated in an order, since they are within the principle that electrical lighting corporations are subject generally to the rules which govern common carriers and may not discriminate between their customers.

*Armour Packing Company vs. Edison Electrical Illuminating Company of Brooklyn*, 115 App. Dlv. 51.

The headnote in that case reads (51):

"An electrical lighting company which uses the public streets and highways is a public service corporation and is subject generally to the rules which govern common carriers and may not discriminate between its customers."

The court stated the principle as follows, page 54:

"It is said in 10 American and English Encyclopedia of Law (2d edition), 869: 'Electrical lighting companies being given the use of the streets and public ways for the erection of such appliances as are necessary for the maintenance of their works, and having the right to acquire the use of lands for their business by write *ad quod damnum*, are *quasi* public corporations, and it is, therefore, their duty to furnish the city's inhabitants with electric light and to do so upon the terms and conditions common to all and without discrimination. They cannot fix a variety of prices or impose different terms and conditions according to their caprice or whim.'

"The justice of this rule cannot well be doubted."

As to the provisions in the first inclosure marked section 3 (a) and (b) and section 4, which declare specifically that the companies shall not deviate from the rates filed with the Commission, I am of the opinion that these provisions may be incorporated in an order by virtue of the powers over electrical corporations conferred by section 66 of the act, subdivisions 1, 5 and 9, and by section 4 of the act, and because of the law as to discrimination established in the Armour Packing Company case above cited.

By section 66 of the act, subdivision 1, the Commission has "general supervision" over electrical companies.

By section 66; subdivision 5, the Commission is authorized to

(a) Examine all persons, corporations and municipalities under its supervision;

(b) Keep informed as to the methods employed by them in the transaction of their business; and

(c) See that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law.

Section 66, subdivision 9, confers power on the Commission

To examine the books and affairs of any such corporation, persons or municipalities, and to compel the production before it of books and papers pertaining to the matters being investigated by it.

Section 4 confers on each Commission

"All powers necessary or proper to enable it to carry out the purposes of this act."

With regard to the second inclosure, a copy of which is herewith transmitted, marked II, I am of the opinion that the Commission has power to incorporate in an order the provisions checked thus , but that the provisions inclosed in parentheses are of doubtful propriety in their present form.

The purpose of the proposed section 7 (a), first sentence is to insure to the Commission and the public thirty days' notice of all schedules. I would suggest eliminating this negative provision and incorporating the affirmative provision for thirty days' notice in section 1, as interlined in the accompanying draft. The Commission having incorporated section 1 in an order, its remedy in case of failure by the corporation to obey such order is provided for by proceedings to collect penalties under section 73 of the act.

In section 6 (a) and (b) I suggest the insertion of the words "for each specific class of business."

As to the provision in section 10 (a) that all orders of the Commission in the applicants copies of all schedules, I think that such free distribution might be properly required if necessary to promote the security and accommodation of the public, and if not unduly expensive. The requirement in its present form might subject a corporation to unnecessary expense and annoyance. If the purpose of the provision could be effected and at the same time a reasonable discretion left to the company as to the persons entitled to its schedules, I think the interest of the public would be sufficiently secured. I would suggest a modification somewhat as indicated by the changes proposed in the copy.

As to the provision in section 10(a) that all orders of the Commission in the matters specified be promulgated by the companies, I doubt the power of the Commission to order such publication.

I have suggested an amendment to section 11(g) in line with the proposed changes in section 7 (a) and )section 71.

Respectfully yours,

(Signed)

GEO. S. COLEMAN,  
Counsel to the Commission.

## ORDER FOR HEARING No. 823.

November 6, 1908.

**Ordered**, That a hearing be held by the Public Service Commission for the First District on Friday, November 13, 1908, at 2:30 P. M., at the office of the Commission, 154 Nassau street, New York city, for the purpose of determining whether, in order to insure uniform and adequate dissemination of information as to the rates, contracts and practices relating to service furnished by electrical corporations, and to prevent discrimination and unreasonable preference by electrical corporations and also deviation from their rates, an order should be issued by the Commission, containing substantially the provisions in regard to publication of rates and deviation therefrom in the draft hereto annexed.

**Ordered further**, That a copy of this order, with the draft annexed, be served upon all the electrical corporations within this district at least four days before the date fixed for hearing.

**ORDER ISSUED BY THE PUBLIC SERVICE COMMISSION FOR  
THE FIRST DISTRICT, STATE OF NEW YORK, PRESCRIBING  
THE FORM AND GOVERNING THE FILING OF SCHEDULES  
OF ALL RATES AND CONTRACTS IN USE BY ELECTRICAL  
CORPORATIONS.**

Issued under order of the Commission, No. , 1908.

**SCHEDULES OF RATES AND CONTRACTS.**

**Schedules must be filed thirty days before taking effect.**

Sec. 1. Every electrical corporation subject to the jurisdiction of the Public Service Commission for the First District shall, at least thirty days before any schedules go into effect, file with the Commission, and shall, for the same length of time, keep open to public inspection printed schedules of all rates, contracts, conditions of supply and regulations relating to the service of such electrical corporation in the manner prescribed by the following rules.

Sec. 2. All such schedules and supplements shall be printed on hard calendared paper of good quality in sheet or pamphlet form of 8½ by 11 inches in size. Stereotype, planograph or other printing press process may be used.

Sec. 3. The title page of every schedule and supplement thereto shall show in full:

(a) Name of issuing corporation.  
(b) The serial number of that schedule with proper prefix. (See Rule 11 (c).)

(c) The area to which that schedule applies.  
(d) Date of issue, date of posting, and date effective. (See Rules 1, 7 and 9.)

(e) Name, title and address of officer by whom issued. (See Rule 12.)

(f) On upper left-hand corner of every schedule the words "Only one supplement to this schedule may be in effect at any time." (See Rule 6 (a).)

(g) On every schedule or supplement cancelling a schedule or supplement, a notice of such cancellation, giving the P. S. C. number of such schedule. (See Rule 5 (a).)

(h) On every schedule or supplement issued on less than thirty days notice by permission from or order or regulation of the Commission, the following notation: "Issued on ..... days' notice to the public and Commission, under special permission or order of the Public Service Commission for the First District, State of New York, No. ...., of date .....

**CONTENTS OF SCHEDULE.**

**Contents.**

Sec. 4. Each schedule shall contain in the order named:

(a) Title page.  
(b) Table of contents.  
(c) Explanation of reference marks and technical abbreviations used in the schedule or supplement.

(d) Such explanatory statement in clear and explicit terms regarding the matter contained in the schedule as may be necessary to remove all doubt as to its proper application.

(e) General rules and regulations relating to rates, contracts and the use of electricity by the public or any apparatus furnished by the corporation.

(f) An exact copy of every form of contract or schedule of rates, each to be followed by an exact copy of the conditions, terms, regulations and riders applicable thereto, and by an exact copy of the form of bill to be rendered under each contract showing how bills are computed.

Sec. 5. (a) A schedule may be cancelled only by a superseding cancellation schedule.

(b) If a schedule is cancelled by the issuance of a superseding schedule, cancellation notice must not be given by supplement but by notice printed in the new schedule, making specific reference to the P. S. C. number of the schedule cancelled.

(c) Cancellation of the schedule also cancels supplement to such schedule, if any be in effect.

Sec. 6. (a) Only one schedule including one supplement for each corporation may be in effect at any one time.

(b) A schedule may be amended or altered by a supplement, but Amendments only one supplement may be in effect at any one time, and every sup- and supplement shall state what schedule it modifies, giving the P. S. C. ments. number.

(c) Any supplement may be cancelled or superseded by another supplement.

(d) Supplements to a schedule shall be numbered as consecutive supplements to that schedule and shall not be given new or separate P. S. C. numbers.

Sec. 7. (a) The title page of every schedule and supplement must show full 30 days notice, or bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than the regular notice.

(b) Changes of schedules and supplements may be permitted by Thirty days' the Commission on less than the regular 30 days' notice, but this notice of authority will be exercised only in cases where actual emergency or change is real merit is shown. Applications, duly verified, for permission to necessary put in force a schedule or supplement on less than 30 days' notice, Changes shall be addressed to the Public Service Commission for the First allowed on District, State of New York, N. Y., in the form described by Rule 11, short notice, and must be over the signature of the officer charged with the preparation, posting and filing of schedules, specifying title. Action will be taken only on receipt of the verified application. (See Rule 12 (b), Form No. 2.)

Sec. 8. After notice of a change in a schedule or a supplement has been filed and published, the new schedule must be allowed to go into effect and cannot be withdrawn, cancelled, superseded or amended, must become except upon notice filed and published for at least 30 days after the effective date when the schedule has become effective, or upon shorter notice allowed by the Commission.

Sec. 9. (a) Printed copies of all schedules and supplements in force or to be placed in force for the use of the public shall be kept posted for at least 30 days before put into effect, in two public and conspicuous places in every office or place where applications for service are received in such manner as to be readily accessible to and conveniently inspected by the public.

(b) Each corporation shall provide and maintain a sufficient supply of the current schedules and supplements at every such office or place to meet promptly any reasonable demand therefor by a customer or prospective applicant for service.

Sec. 10. Unless otherwise specified in the order in the case, such schedule or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this rule or under special authority granted in the order in the case, shall bear on its title page notation "In compliance with order of the Public Service Commission, First District, in Proceeding No. ...." Duration of notice.

Sec. 11. (a) Every schedule and supplement shall be filed with the Commission by the proper officer of the electrical corporation.

(b) Schedules and supplements sent for filing must be addressed to Secretary, Public Service Commission, First District, No. 154 Nassau street, New York, N. Y.

(c) Every schedule and supplement filed with the Commission shall be accompanied by a letter of transmittal in duplicate. (See Rule 12 (a) for form.) The original will be retained by the Commission and the duplicate will be stamped and returned to the filing corporation as its receipt for the schedule or supplement covered thereby.

(d) All schedules filed with the Commission must bear consecutive serial numbers, commencing with No. 1 for each corporation, with the following prefix thereto: "P.S.C.—1 N.Y." For example, the first schedule shall be "P.S.C.—1 N.Y.—No. 1." Such prefix and number must be printed in bold type, in the upper right corner at top of page, and immediately thereunder, in smaller type, the P. S. C. number of every schedule and supplement cancelled thereby.

(e) The schedule filed with a P. S. C. number, which is not consecutive with the last number filed, must be accompanied by a memorandum explaining omission of the missing number or numbers.

(f) When a schedule or supplement is rejected by the Commission as unlawful, the records so show and, therefore, such schedule or supplement should not thereafter be referred to as cancelled, amended or otherwise except to note on publication issued in lieu of such

Method of filing.

P. S. C. numbers

Rejected schedules

rejected schedule "In lieu of....., rejected by Commission," nor shall the number which it bears be again used.

(g) No schedule or supplement will be accepted for filing unless it is delivered to the Commission, free from all charges or claims for postage, the full 30 days before the date upon which such schedule is stated to be effective. No consideration will be given to or for the time during which a schedule or supplement may be held by the Post-Office authorities because of insufficient postage. Schedules or supplements filed and issued without proper notice to the Commission will be returned to the sender. Full statutory notice must be given of any reissue thereof, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such schedule or supplement was received and the date of attempted correction.

(h) No consideration will be given to telegraphic notices in computing the 30 days required.

(i) If publication is not according to these regulations this may be considered by the Commission sufficient cause for rejection of schedule or supplement when tendered for filing.

Sec. 12. The following forms are prescribed for use by corporations on paper of 8½x11 size:

(a) LETTER OF TRANSMITTAL. FORM NO. 1.

[Name of Corporation.]

(Date) \_\_\_\_\_,

Advice No. \_\_\_\_\_.

To the PUBLIC SERVICE COMMISSION,  
First District, State of New York,  
New York, N. Y.:

Accompanying schedule or supplement is sent to you for filing in compliance with Order No. \_\_\_\_\_ of the Public Service Commission for the First District, issued by \_\_\_\_\_ bearing

P.S.C.—1 N.Y.—No. \_\_\_\_\_;  
Supp. No. \_\_\_\_\_, to P.S.C.—1 N.Y.—No. \_\_\_\_\_;  
Effective \_\_\_\_\_, 190 \_\_\_\_\_;

[Signature of Filing Agent.]

(b) APPLICATION TO CHANGE A SCHEDULE TO SUPPLEMENT ON LESS THAN THIRTY DAYS' NOTICE. FORM NO. 2.

[Name of Corporation.]

, 190 .

[Place and Date.]

To the PUBLIC SERVICE COMMISSION,  
First District, State of New York,  
New York, N. Y.:

The \_\_\_\_\_ by \_\_\_\_\_  
[Name of corporation.] [Name of officer.]  
Its \_\_\_\_\_

[Title of officer.] hereby applies under Order No. ..... of the Public Service Commission for the First District for an order granting permission to put in effect ..... days after publication at offices and filing with the Commission the following schedule supplement.

The proposed change is intended to be published in schedule P.S.C.—1 N.Y.—No. \_\_\_\_\_, Supplement No. \_\_\_\_\_, and will affect the schedule P.S.C.—1 N.Y.—No. \_\_\_\_\_, Supplement No. \_\_\_\_\_, attached.

This application is based upon the following special circumstances and conditions:

[Name of Corporation.]

By \_\_\_\_\_

[Officer]

[Title]

## AFFIDAVIT.

STATE OF NEW YORK, { ss.:  
County of \_\_\_\_\_,

being duly sworn, says that he is the officer named in the foregoing application, that he has read said application and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein specifically stated as on information and belief, and as to such matters he believes it to be true.

[Name of affiant.]

Subscribed and sworn to before me  
this....day of....1908...

Notary Public.

Hearings held November 13th, 24th, December 1st and 3d.

See opinion in preceding case (No. 822) upon which the following order was issued:

In the Matter  
of

An investigation for the purpose of determining whether, in order to insure uniform and adequate dissemination of information as to the rates, contracts and practices relating to service furnished by Electrical Corporations, and to prevent discrimination and unreasonable preference by electrical corporations and also deviation from their rates, an order should be issued by the Commission with respect thereto.

CASE No. 823  
FILING ORDER.  
December 18, 1908

This matter coming on to be heard on November 13, 1908, pursuant to Hearing Order No. 823, and sessions having been held before Hon. Milo R. Maitble, Commissioner, on November 13, 1908, and thereafter by adjournment on November 24, December 1 and 3, 1908, and Albert H. Walker, Esq., having appeared for the Public Service Commission for the First District; Messrs. Beardsley & Hemmens, by Henry J. Hemmens, Esq., for the New York Edison Company, the United Electric Light and Power Company, the Brush Electric Illuminating Company and the Consolidated Telegraph and Electrical Subway Company; Mr. J. W. Lieb, Jr., and Mr. H. M. Edwards, for the New York Edison Company; Charles F. Mathewson, Esq., Edward J. Patterson, Esq., and Mr. C. G. M. Thomas for the New York and Queens Electric Light and Power Company; Mr. W. W. Freeman, for the Edison Electric Illuminating Company of Brooklyn, the Kings County Electric Light and Power Company, and the Amsterdam Light, Heat and Power Company; E. D. Hawkins, Esq., and Mr. Carleton Macy, for the Queens Borough Gas and Electric Company; Adrian H. Larkin, Esq., and Mr. J. E. Phillips, for the Richmond Light and Railroad Company; Mr. Frank W. Smith, for the United Electric Light and Power Company; Mr. E. H. Rosenquest, for The Bronx Gas and Electric Company; Mr. E. S. Bellows, for the Westchester Lighting Company; and Mr. Fremont Wilson and Mr. Schreiber having appeared personally; and arguments having been heard, it is

*Ordered:*

Section 1. Every electrical corporation subject to the jurisdiction schedules of the Public Service Commission for the First District shall, at least must be thirty days before any schedules go into effect, file with the Commission, and shall, for the same length of time, keep open to public inspection printed schedules of all rates and forms of contracts relating to the service of such electrical corporation in the manner prescribed by the following sections of this order.

§ 2. All such schedules and supplements shall be printed on hard Schedules calendered paper of good quality in sheet or pamphlet form of 8½ by 11 inches in size. Stereotype, planograph or other printing press printed process may be used.

§ 3. The title page of every schedule and supplement thereto shall Title page show in full:

(a) Name of issuing corporation.

- (b) The serial number of that schedule with proper prefix. (See § 10 (d).)
- (c) The area to which that schedule applies.
- (d) Date of issue, date of posting, and date effective. (See §§ 1, 7 and 9.)
- (e) Name, title and address of officer by whom issued. (See § 11.)
- (f) On upper left-hand corner of every schedule the words "Only one supplement to this schedule may be in effect at any time." (See § 6 (a).)
- (g) On every schedule or supplement cancelling a schedule or supplement, a notice of such cancellation, giving the P. S. C. number of such schedule. (See § 5 (a).)
- (h) On every schedule or supplement issued on less than thirty days' notice by permission from or order or regulation of the Commission, the following notation: "Issued on \_\_\_\_\_ days' notice to the public and Commission, under special permission or order of the Public Service Commission for the First District, State of New York, No. \_\_\_\_\_, of date \_\_\_\_\_."

#### CONTENTS OF SCHEDULE.

##### Contents.

- § 4. Each schedule shall contain in the order named:
  - (a) Title page.
  - (b) Table of contents.
  - (c) Explanation of reference marks and technical abbreviations used in the schedule or supplement.
  - (d) Such explanatory statement in clear and explicit terms regarding the matter contained in the schedule as may be necessary to remove all doubt as to its proper application.
  - (e) General rules and regulations relating to rates, contracts and the use of electricity by the public or any apparatus furnished by the corporation.
  - (f) An exact copy of every form of contract and schedule of rates, each to be followed by an exact copy of every form of rider applicable thereto.

##### Cancellation.

- § 5. (a) A schedule may be cancelled only by a superseding schedule.
- (b) If a schedule is cancelled by the issuance of a superseding schedule, cancellation notice must not be given by supplement but by notice printed in the new schedule, making specific reference to the P. S. C. number of the schedule cancelled.

##### Amendments and supplements.

- (c) Cancellation of the schedule also cancels supplement to such schedule, if any be in effect.
- § 6. (a) Only one schedule including one supplement for each corporation may be in effect at any one time.
- (b) A schedule may be amended or altered by a supplement, but only one supplement may be in effect at any one time, and every supplement shall state what schedule it modifies, giving the P. S. C. number.
- (c) Any supplement may be cancelled or superseded by another supplement.
- (d) Supplements to a schedule shall be numbered as consecutive supplements to that schedule and shall not be given new or separate P. S. C. numbers.

##### Thirty days' notice of change is necessary. Changes allowed on short notice.

- § 7. (a) The title page of every schedule and supplement must show full thirty days' notice, or bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than the regular notice.

(b) Changes of schedules and supplements may be permitted by the Commission on less than the regular thirty days' notice, but such permission will be granted only in cases where actual emergency or substantial merit is shown, or where the change reduces a rate. Applications, duly verified, for permission to put in force a schedule or supplement on less than thirty days' notice, shall be addressed to the Public Service Commission for the First District, State of New York, N. Y., in the form prescribed by section 11, and must be over the signature of the officer charged with the preparation, posting and filing of schedules, specifying title. Action will be taken only on receipt of the verified application. (See § 11 (b). Form No. 2.)

##### Schedules filed and published must become effective.

- § 8. After notice of a change in a schedule or a supplement has been filed and published, the new schedule must be allowed to go into effect and cannot be withdrawn, cancelled, superseded or amended, except upon notice filed and published for at least thirty days after the date when the schedule has become effective, or upon shorter notice allowed by the Commission.

##### Posting.

- § 9. Printed copies of all schedules and supplements in force or to be placed in force shall, except as herein provided, be kept posted for at least thirty days before put into effect, in two public and conspicuous places in every office or place where applications for service are received in such manner as to be readily accessible to and conveniently inspected by the public.

**§ 10.** (a) Every schedule and supplement shall be filed with the Method Commission by the proper officer of the electrical corporation.

(b) Schedules and supplements sent for filing must be addressed to Secretary, Public Service Commission, First District, No. 154 Nassau street, New York, N. Y.

(c) Every schedule and supplement filed with the Commission shall be accompanied by a letter of transmittal in duplicate. (See § 11 (a) for form.) The original will be retained by the Commission and the duplicate will be stamped and returned to the filing corporation as its receipt for the schedule or supplement covered thereby.

(d) All schedules filed with the Commission must bear consecutive P. S. C. serial numbers, commencing with No. 1 for each corporation, with numbers.

the following prefix thereto: "P. S. C.—1 N. Y." For example, the first schedule shall be "P. S. C.—1 N. Y.—No. 1." Such prefix and number must be printed in bold type, in the upper right corner at the top of page, and immediately thereunder, in smaller type, the P. S. C. number of every schedule and supplement cancelled thereby.

(e) The schedule filed with a P. S. C. number, which is not consecutive with the last number filed, must be accompanied by a memorandum explaining the omission of the missing number or numbers.

(f) When a schedule or supplement is rejected by the Commission as unlawful, the records so show and, therefore, such schedule or supplement should not thereafter be referred to as cancelled, amended or otherwise except to note on publication issued in lieu of such rejected schedule "In lieu of \_\_\_\_\_, rejected by Commission," nor shall the number which it bears be again used.

(g) No schedule or supplement will be accepted for filing unless it is delivered to the Commission, free from all charges or claims for postage, the necessary time before the date upon which such schedule is stated to be effective. No consideration will be given to or for the time during which a schedule or supplement may be held by the post-office authorities because of insufficient postage. Schedules or supplements filed and issued without proper notice to the Commission will be returned to the sender. Full notice must be given of any reissue thereof, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such schedule or supplement was received and the date of attempted correction.

(h) No consideration will be given to telegraphic notices in computing the thirty days required.

(i) If publication is not according to these regulations this may be considered by the Commission sufficient cause for rejection of schedule or supplement when tendered for filing.

**§ 11.** The following forms are prescribed for use by corporations on paper of 8½ by 11 size:

(a) LETTER OF TRANSMITTAL. FORM NO. 1.

[Name of corporation.]  
[Date] \_\_\_\_\_,

Advice No. \_\_\_\_\_.

To the PUBLIC SERVICE COMMISSION,  
First District, State of New York,  
New York, N. Y.:

Accompanying schedule or supplement is sent to you for filing in compliance with Filing Order in Case No. \_\_\_\_\_ of the Public Service Commission for the First District, issued by \_\_\_\_\_ bearing \_\_\_\_\_.

P. S. C.-1 N. Y.-No. \_\_\_\_\_;

Supp. No. \_\_\_\_\_, to P. S. C.-1 N. Y.-No. \_\_\_\_\_.  
Effective \_\_\_\_\_, 190\_\_\_\_\_.  
\_\_\_\_\_.

[Signature of filing agent.]

(b) APPLICATION TO CHANGE A SCHEDULE OR SUPPLEMENT ON LESS THAN THIRTY DAYS' NOTICE. FORM NO. 2.

[Name of Corporation.]

\_\_\_\_\_, 190\_\_\_\_\_.  
[Place and date.]

To the PUBLIC SERVICE COMMISSION,  
First District, State of New York,  
New York, N. Y.:

The \_\_\_\_\_ by \_\_\_\_\_  
[Name of corporation.] [Name of officer.]

Its \_\_\_\_\_  
[Title of officer.]

hereby applies under Filing Order in Case No. \_\_\_\_\_ of the Public Service Commission for the First District for an order granting permission to put in effect \_\_\_\_\_ days after publication at offices and filing with the Commission the following schedule supplement:

The proposed change is intended to be published in schedule P. S. C.-1 N. Y.-No. \_\_\_, Supplement No. \_\_\_, and will affect the schedule P. S. C.-1 N. Y.-No. \_\_\_, Supplement No. \_\_\_, attached.

This application is based upon the following special circumstances and conditions:

[Name of corporation.]

By \_\_\_\_\_ [Officer.] [Title.]

**AFFIDAVIT.**

STATE OF NEW YORK, ss.:  
County of \_\_\_\_\_,

\_\_\_\_\_, being duly sworn, says that he is the officer above named, and that he has read the foregoing application and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein specifically stated as on information and belief, and as to such matters he believes it to be true.

[Name of affiant.]

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_ 190\_\_\_\_.

Notary Public.

State and City contracts.

§ 12. Nothing herein shall be construed as applicable to schedules of rates and forms of contracts relating to service rendered to the city or State of New York, save that every electrical corporation shall file with the Commission a copy of every contract relating to such service made with the city or State of New York within ten days from date of contract.

Time of taking effect of order.

§ 13. This order shall take effect on January 15, 1909, and shall continue in force until abrogated or modified by the Commission; and on or before January 15, 1909, every electrical corporation within the jurisdiction of the Commission shall, as hereinbefore provided, file and post printed schedules of all rates and every form of contract, with every form of rider applicable thereto, thereafter to be in force; provided, however, that all such schedules, contracts and riders filed and posted before January 15, 1909, shall go into effect on January 15, 1909.

§ 14. Every electrical corporation within the jurisdiction of the Public Service Commission for the First District shall notify the Commission on or before January 2, 1909, whether the terms of this order are accepted and will be obeyed.

**Consolidated Telegraph and Electrical Company — Empire City Subway Company.**— Certain corporate documents required to be filed.

In the Matter  
of

Certified copies of Corporate Documents to be furnished by the CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY and the EMPIRE CITY SUBWAY COMPANY.

ORDER No. 247.  
February 7, 1908.

*Resolved*, That the Consolidated Telegraph & Electrical Subway Company and the Empire City Subway Company, Limited, be and each of them hereby is required to

furnish to the Public Service Commission for the First District and file with the secretary of said commission within fifteen days after service upon each company of a certified copy of this resolution, copies of each of the documents specified below, sworn or certified to be true copies of the originals thereof, by an official of the company, and if any of such documents are on file or of record in any public office, stating that fact and the date and place of such filing or record:

1. Certificate of incorporation;
2. Supplemental or amended certificate of incorporation;
3. Certificates relative to capital stock, whether increase or decrease;
4. Consents of local authorities;
5. Contracts with local or city authorities;
6. Leases of real estate;
7. All agreements with companies operating or leasing duct space in any portion of your subways;
8. Copies of all agreements with public service corporations not set forth in (7) above;
9. All agreements with and consents of municipal departments and officials or State and Federal authorities;
10. A map drawn to a scale not exceeding 500 feet to the inch showing all ducts laid by it and indicating thereon the size and number of such ducts as of January 1, 1908.
11. A reference to all court decisions affecting its franchises;
12. A copy of any other documents constituting a link in the chain of monuments of title to franchise.

**Gas and Electrical Corporations.—**Certain corporate documents required to be filed.

In the Matter  
of  
Corporate documents to be furnished by gas and electrical companies in the First District.

ORDER No. 22A.  
January 14, 1908.

*Resolved*, That the following be adopted and that it be served upon the various gas and electrical companies in this district:

You are hereby required to furnish within thirty days from the date of service of this order, copies of the following documents relative to each and every company operated or controlled by you, whether by lease or sublease, by stock ownership or by joint agreement. These documents called for may be sworn copies or verified copies of the originals, and if filed in a public office, that fact should be so indicated with the date of filing:

1. Certificate of incorporation.
  2. Supplemental or amended certificate of incorporation.
  3. Any act of the Legislature, granting, confirming or limiting any right or franchise of the corporation, or affecting the right of the corporation to use or exercise any franchise.
  4. Certificates relative to changes in the capital stock.
  5. Any consolidation or merger agreement between companies now operating in connection with your plant.
  6. Consents of local authorities constituting franchise rights.
  7. Certificates from the State or municipal authorities, including departments, affecting your franchises.
  8. Copies of all mortgages executed by you or by companies in your system.
  9. Copy of all leases, deeds, contracts or other documents in the chain of your title.
  10. Location of all real estate owned in fee, described by metes and bounds.
  11. Location of all real estate leased, described by metes and bounds.
  12. Copy of any contracts executed between companies in your system or other companies as to the purchase or sale of gas or electricity.
  13. Reference to court decisions, affecting the validity of your franchises.
  14. As of July 1, 1907, the location of your plant or plants, and system, with a full description of your property and franchises, stating in detail how each franchise stated to be owned was acquired.
  15. A map drawn to a scale of not more than 2,500 feet to the inch, showing all pipes, conduits, and other structures constructed or now maintained by you in the public streets.
- The foregoing refers in each case to each company in your system, except where otherwise noted.

**Stockholding in Railroad Corporations, Street Railroad Corporations and other Common Carriers.**

In the Matter  
of

Information with respect to Stockholding of Railroad Corporations, Street Railroad Corporations and Common Carriers in the First District.

ORDER No. 136A,  
January 28, 1908.

*Resolved:*

First: That every railroad corporation, street railroad corporation, common carrier and every stock corporation holding any shares of the capital stock of any railroad corporation, street railroad corporation or common carrier, be and they hereby are severally required to file with the Secretary of the Public Service Commission for the First District, at its office, No. 154 Nassau street, borough of Manhattan, New York City, within fifteen days from the date of service of this order, specific answers, verified by an oath of an officer of each such corporation, to the following question which is hereby now addressed to each of them, to wit:

Give the name of every railroad corporation, street railroad corporation or common carrier organized or existing under the laws of the State of New York, of which, on July 1, 1907, you held any shares of the capital stock; the number of shares of capital stock then so held by you, and the par value of each such share.

Second: That every railroad corporation, street railroad corporation and common carrier organized or existing under or by virtue of the laws of the State of New York, be and they hereby are severally required to file with the said Secretary, at said office, on or before said date, specific answers, verified by an oath of an officer of each such corporation, to the following question which is hereby now addressed to each of them, to wit:

Give the name of every stock corporation, railroad corporation, street railroad corporation or common carrier, which, on July 1, 1907, held any shares of your capital stock either as legal or as beneficial owner; the number of such shares then held by it, and the par value of each share.

**Stockholding in Gas and Electrical Corporations.**

In the Matter  
of

Information with respect to Stockholding of Gas and Electrical Corporations in the First District.

ORDER No. 137A,  
January 14, 1908.

*Resolved:*

First: That every gas corporation, electrical corporation and every stock corporation holding any shares of the capital stock of any gas corporation or electrical corporation, be and they hereby are severally required to file with the Secretary of the Public Service Commission for the First District, at its office, No. 154 Nassau street, borough of Manhattan, New York city, within fifteen days from the date of service of this order, specific answers, verified by an oath of an officer of each such corporation to the following question which is hereby now addressed to each of them, to wit:

Give the name of every gas corporation or electrical corporation organized or existing under the laws of the State of New York, of which, on July 1, 1907, you held any shares of the capital stock; the number of shares of such capital stock then so held by you in each such corporation, and the par value of each such share.

Second: That every gas corporation and electrical corporation organized or existing under or by virtue of the laws of the State of New York be and they hereby are severally required to file with the said Secretary, at said office within said time, specific answers, verified by an oath of an officer of each such corporation, to the following question which is hereby now addressed to each of them, to wit:

Give the name of every stock corporation, gas corporation or electrical corporation, which, on July 1, 1907, held any shares of your capital stock either as legal or as beneficial owner; the number of such shares then held by it, and the par value of each such share.

**New York City Railway Company.—Form to be used in reporting cars repaired and ready for inspection.**

ORDER No. 225.

January 28, 1908.

*Resolved*, That the New York City Railway Company, or its receivers, shall use the following form in reporting the cars repaired and ready for inspection, as provided by Order No. 179.

.....  
New York City, .....

To the PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT, Bureau of Transportation, 154 Nassau Street, New York City.

SIRS.—We hereby notify you that the following cars have been overhauled and repaired at ..... car barn, as provided in Order No. 179 of your Commission, and may be tested at ..... on

.....  
(Date)

Cars numbered .....  
.....  
(Signed)

**Third Avenue Railroad Company — Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company — Dry Dock, East Broadway and Battery Railroad Company.  
— Form to be used in reporting cars repaired and ready for inspection.**

ORDER No. 261.

February 14, 1908.

*Resolved*, That the Third Avenue Railroad Company, the Forty-second Street, Manhattanville & St. Nicholas Avenue Railroad Company, and the Dry Dock, East Broadway and Battery Railroad Company, or their receiver, shall use the following form in reporting the cars repaired and ready for inspection, as provided by Order 260.

.....  
New York city, .....

To the PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT, Bureau of Transportation, 154 Nassau Street, New York City.

SIRS.—We hereby notify you that the following cars have been overhauled and repaired at ..... car barn, as provided in Order No. 260 of your Commission, and may be tested at ..... on

.....  
(Date)

Cars numbered .....  
.....  
(Signed)

**Brooklyn Union Elevated Railroad Company.—Despatchers and “trouble” reports.**

ORDER FOR ANSWER No. 228.

January 31, 1908.

*Resolved*, That the Brooklyn Union Elevated Railroad Company be required to make answer to the following questions and to furnish information called for herein, within one week after the receipt of this resolution:

1. At what points on the elevated lines are train despachters stationed?
2. Do these despachters make a record of the actual time of the train movement past such points, covering any or all the twenty-four hours?
3. If the train despachters do not make such a record, what are their functions, and are such records obtained by any other employees of the railroad company?
4. Are any of the general officers of the operating company supplied each day with "Trouble" reports, or any reports which would indicate whether the trains on the various lines were or were not being operated in accordance with the schedules, and the causes of such variations therefrom as might occur?

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**Interborough Rapid Transit Company.—Despachters and "trouble" reports on subway and elevated lines.**

**ORDER FOR ANSWER No. 227.**

January 31, 1908.

*Resolved*, That the Interborough Rapid Transit Company be required to make answer to the following questions and to furnish information called for herein, within one week after the receipt of this resolution:

1. At what points on the subway and elevated lines are train despachters stationed?
2. Do these despachters make a record of the actual time of the train movement past such points, covering any or all of the twenty-four hours?
3. If the train despachters do not make such a record, what are their functions, and are such records obtained by any other employees of the railroad company?
4. Furnish the Commission with a certified copy of such records as were made on January 21, 1908, covering the subway and elevated train movement on that day.
5. Are any of the general officers of the operating company supplied each day with "Trouble" reports, or any reports which would indicate whether the trains on the various lines were or were not being operated in accordance with the schedules, and the causes of such variations therefrom as might occur?
6. Furnish the Commission with a certified copy of such "Trouble" reports or reports as referred to in paragraph No. 5, for January 21, 1908.

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**Railroad and Street Railroad Corporations.—Number of car motors, car bodies and car trucks operated.**

Order No. 437.  
Order No. 437a.

In the Matter  
of

Information to be supplied by RAILROAD CORPORATIONS and STREET RAILROAD CORPORATIONS within the First District as to number of car motors, car bodies and car trucks operated by them.

ORDER No. 437.  
April 28, 1908.

*Resolved*, That every railroad corporation and street railroad corporation under the jurisdiction of the Public Service Commission for the First District be, and it hereby is required to make and file with the Secretary of the said Commission:

1. Specific answer, semi-annually, to each of the questions shown on the attached form entitled "Table of Car Motors" as to any car motors owned, used or operated by such company, said answers to be made as of July 1st and January 1st in each year, and to be filed on or before July 20th and January 20th, respectively, thereafter; except that the first answer under this section shall be made as of May 1, 1908, and shall be filed on or before May 20, 1908, instead of being made as of July 1, 1908, and filed on or before July 20, 1908.
2. Specific answer, monthly, to each of the questions shown on the attached form entitled "Table of Car Motors" as to any additional car motors owned, used or operated by such company, after the making and filing of the information required by and under the foregoing requisition (1), the said answers to be made as of the first day of each month, and to be filed on or before the tenth day of such month and to cover such additional car motors for the preceding month.

3. Specific answer, semi-annually, to each of the questions shown on the attached form entitled "Table of Car Bodies" as to any car bodies owned, used or operated by such company, the answers to be made as of July 1st, and January 1st in each year, and to be filed on or before July 20th and January 20th, respectively, thereafter; except that the first answer under this section shall be made as of May 1, 1908, and shall be filed on or before May 20, 1908, instead of being made as of July 1, 1908, and filed on or before July 20, 1908.

4. Specific answer, monthly, to each of the questions shown on the attached form entitled "Table of Car Bodies" as to any additional car bodies owned, used or operated by such company after the making and filing of the information required by and under the foregoing requisition (3), the said answers to be made as of the first day of each month, and to be filed on or before the tenth day of such month and to cover such additional car bodies for the preceding month.

5. Specific answer, semi-annually, to each of the questions shown on the attached form entitled "Table of Car Trucks" as to any car trucks owned, used or operated by such company, the answers to be made as of July 1st and January 1st in each year and to be filed on or before July 20th and January 20th, respectively, thereafter; except that the first answer under this section shall be made as of May 1, 1908, and shall be filed on or before May 20, 1908, instead of being made as of July 1, 1908, and filed on or before July 20, 1908.

6. Specific answer, monthly, to each of the questions shown on the attached form entitled "Table of Car Trucks" as to any additional car trucks owned, used or operated by such company after the making and filing of the information required by and under the foregoing requisition (5), the said answers to be made as of the first day of each month and to be filed on or before the tenth day of such month, and to cover such additional car trucks for the preceding month. And it is further

*Resolved*, That this order shall take effect on the 28th day of April, 1908, and shall continue in force until and including January 20, 1910, unless earlier modified or abrogated by the Commission.

## TABLE OF CAR MOTORS

**PUBLIC SERVICE COMMISSION**  
For the First District  
**154 Nassau Street, New York**

By..... R. R. Co. Date..... 190.....

Signed:

## Official Capacity

## TABLE OF CAR BODIES

## TABLE OF CAR TRUCKS

**PUBLIC SERVICE COMMISSION**  
For the First District  
154 Nassau Street, New York

For the First District  
1154 Nassau Street, New York

The following final order supplementing Order No. 437 was issued:

## ORDER No. 437a.

June 19, 1908.

*Resolved*, That every railroad corporation and street railroad corporation under the jurisdiction of the Public Service Commission for the First District be, and it hereby is required to make and file with the Secretary of the said Commission:

1. Specific answer, semi-annually, to each of the questions shown on the attached form entitled "Table of Car Motors" as to any car motors owned, used or operated by such company, said answers to be made as of July 1st and January 1st in each year, and to be filed on or before July 20th and January 20th, respectively, thereafter.

2. Specific answer, monthly, to each of the questions shown on the attached form entitled "Table of Car Motors" as to any additional car motors owned, used or operated by such company, after the making and filing of the information required by and under the foregoing requisition (1), the said answers to be made as of the first day of each month, and to be filed on or before the tenth day of such month and to cover such additional car motors for the preceding month.

3. Specific answer, semi-annually, to each of the questions shown on the attached form entitled "Table of Car Bodies" as to any car bodies owned, used or operated by such company, the answers to be made as of July 1st and January 1st in each year, and to be filed on or before July 20th and January 20th, respectively, thereafter.

4. Specific answer, monthly, to each of the questions shown on the attached form entitled "Table of Car Bodies" as to any additional car bodies owned, used or operated by such company after the making and filing of the information required by and under the foregoing requisition (3), the said answers to be made as of the first day of each month, and to be filed on or before the tenth day of such month and to cover such additional car bodies for the preceding month.

5. Specific answer, semi-annually, to each of the questions shown on the attached form entitled "Table of Car Trucks" as to any car trucks owned, used or operated by such company, the answers to be made as of July 1st and January 1st in each year and to be filed on or before July 20th and January 20th, respectively, thereafter.

6. Specific answer, monthly, to each of the questions shown on the attached form entitled "Table of Car Trucks" as to any additional car trucks owned, used or operated by such company after the making and filing of the information required by and under the foregoing requisition (5), the said answers to be made as of the first day of each month and to be filed on or before the tenth day of such month, and to cover such additional car trucks for the preceding month. And it is further

*Resolved*, That this order shall take effect on the 19th day of June, 1908, and shall continue in force until and including January 20, 1910, unless earlier modified or abrogated by the Commission.

TABLE OF CAR MOTORS

PUBLIC SERVICE COMMISSION  
For the First District  
154 Nassau Street, New York

Submitted to	By		R. R. Co.	Date	190.....						
Number.	Type.	Manufacturer.	H. P. Rating.	Cost.	Weight.	No. of 4 Motor Equip- ments.	H. P. Rating per Motor.	Type of Control.	No. of 2 Motor Equip- ments.	H. P. Rating per Motor.	Type of Control.

Signed.....

Official Capacity

PUBLIC SERVICE COMMISSION  
Submitted to For the First District  
154 Nassau Street, New York

190.....  
Date.....  
R. R. Co. By.....

ORDERS OF THE COMMISSION ISSUED IN 1908.

305

TABLE OF CAR BODIES

Number of cars.	Type.	Manufacturer.	Date purchased.	Length over all.	Width of body.	Length of body.	Width over all.	Height over all.	Arrangement of seats.	Seating capacity.	Motor cars.	Trailers.	Weight.	Cost.	Air or hand brakes.	Manufacturer of brakes

Signed.....  
.....Official Capacity

## TABLE OF CAR TRUCKS

PUBLIC SERVICE COMMISSION  
For the First District  
154 Nassau Street, New York

Submitted to ..... Date..... 190.....  
By.....

Number.	Double or single.	Type.	Manufacturer.	Space.	Weight.	Cost.
,						

Signed..... Official Capacity

Orders extending the time within which the information required to be supplied to the Public Service Commission for the First District by certain railroad and street railroad corporations within the First District by Order No. 437, were issued in substantially the following form, to which reference will be hereinafter made:

(Blank Form.)

In the Matter of <b>Information to be Supplied by RAILROAD CORPORATIONS and STREET RAILROAD CORPORATIONS within the First District as to Number of Car Motors, Car Bodies and Car Trucks Operated by Them.</b>	EXTENSION ORDER No.
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An order, No. 437, having been made herein, on or about the 28th day of April, 1908, ordering and directing the railroad corporations and street railroad corporations within the First District to file with the Commission certain reports therein specified on or before May 20, 1908, and the said order having been served upon the.....on the 28th day of April, 1908, and the said company having, on the.....day of.....1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

Ordered, that the time within which the said company shall submit the reports herein mentioned be and the same hereby is extended to and including the.....day of....., 1908.

Extension Order No. 483 (see blank form) issued May 12, 1908, extended the time of the Union Railway Company of New York, or its Receiver, Frederick W. Whitridge, to and including June 1, 1908.

Extension Order No. 484 (see blank form), issued May 12, 1908, extended the time of the Dry Dock, East Broadway and Battery Railroad Company, or its Receiver, Frederick W. Whitridge, to and including June 1, 1908.

Extension Order No. 485 (see blank form), issued May 12, 1908, extended the time of the Southern Boulevard Railroad Company to and including June 1, 1908.

Extension Order No. 519 (see blank form), issued May 12, 1908, extended the time of the Coney Island and Brooklyn Railroad Company to and including June 15, 1908.

Extension Order No. 540 (see blank form), issued May 29, 1908, extended the time of the Interborough Rapid Transit Company to and including June 15, 1908.

Extension Order No. 579 (see blank form), issued June 16, 1908, extended the time of the Interborough Rapid Transit Company to and including June 25, 1908.

Extension Order No. 621 (see blank form), issued July 7, 1908, extended the time of the Interborough Rapid Transit Company to and including July 21, 1908.

**Street Railroad Corporations.— Number of cars owned and operated and kinds of fenders, wheel guards and brakes with which they are equipped.**

In the Matter  
of

Information to be supplied by every Railroad Corporation under the jurisdiction of the Public Service Commission for the First District, with respect to the number of cars owned and operated and the kinds of Fenders, Wheel Guards and Brakes with which they are equipped.

ORDER No. 443.  
April 28, 1908.

*Resolved*, That every street railroad corporation under the jurisdiction of the Public Service Commission for the First District be and hereby is required to file with the Secretary of the Commission, on or before May 10, 1908, a full and complete answer to each of the questions in the following form, such answers to be as of May 1, 1908.

*To the Public Service Commission for the First District:*

SIRS: This Company owns ..... cars and operates upon its lines ..... cars, of which ..... cars are owned by ..... These cars are equipped with fenders, wheel guards and brakes, as set forth below.

NUMBER OF CARS.	CLASS OF CAR.				Style of fender.	Manufacturer of fender.	
	Open or closed.	Trucks.	Weight loaded.	Length over all.			
Owned by company...	.....	.....	.....	.....	.....	.....	.....
Owned by others....	.....	.....	.....	.....	.....	.....	.....
Owned by company...	.....	.....	.....	.....	Style of guard.	Manufacturer of guard.	
					.....	.....	.....
Owned by company...	.....	.....	.....	.....	Style of brake.	Type of power brake.	Type of hand brake.
					.....	.....	.....
Owned by company...	.....	.....	.....	.....			
Owned by others....	.....	.....	.....	.....			

Remarks:

Respectfully,

Orders extending the time within which the information required to be furnished to the Public Service Commission for the First District by railroad corporations within the First District by Order No. 443, were issued in substantially the following form to which reference will be hereinafter made:

(Blank Form.)

In the Matter  
of

Information to be supplied by every RAILROAD CORPORATION under the jurisdiction of the Public Service Commission for the First District with respect to the Number of Cars Owned and Operated and the Kinds of Fenders, Wheelguards and Brakes with which they are equipped.

EXTENSION ORDER  
No. —.

An order, No. 443, having been made herein on or about the 29th day of April, 1908, ordering and directing every railroad corporation under the jurisdiction of the Public Service Commission for the First District to file with the Commission on or before May 10, 1908, certain reports therein specified, said order having been served upon the ..... Railroad Company on the 29th day of April, 1908, and the said ..... Railroad Company having on the ..... day of ..... , 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the said ..... Railroad Company shall submit the reports herein mentioned be and the same hereby is extended to and including the ..... day of June, 1908.

Extension Order No. 486 (see blank form), issued May 12, 1908, extended the time of the Union Railway Company of New York City, or its Receiver, Frederick W. Whitridge, to and including June 1, 1908.

Extension Order No. 487 (see blank form), issued May 12, 1908, extended the time of the Dry Dock, East Broadway and Battery Railroad Company, or its Receiver, Frederick W. Whitridge, to and including June 1, 1908.

Extension Order No. 488 (see blank form), issued May 12, 1908, extended the time of the Southern Boulevard Railroad Company to and including June 1, 1908.

Extension Order No. 509 (see blank form), issued May 19, 1908, extended the time of the Pelham Park Railroad Company to and including June 1, 1908.

Extension Order No. 510 (see blank form), issued May 19, 1908, extended the time of the Staten Island Railway Company to and including the 1st day of June, 1908.

Extension Order No. 520 (see blank form), issued May 22, 1908, extended the time of the Coney Island and Brooklyn Railroad Company to and including June 15, 1908.

New York City Railway Company—Third Avenue Railroad Company.—Number and type of cars owned or operated on July 1, 1907, and number since purchased.

In the Matter  
of

Information to be furnished by the Receivers of the NEW YORK CITY RAILWAY COMPANY and the THIRD AVENUE RAILROAD COMPANY with respect to the number and type of cars owned or operated by said companies as of July 1, 1907, together with the number of cars under order at that time or delivered since that time, etc.

ORDER No. 611,  
June 26, 1908.

*Resolved*, That the receivers of the New York City Railway Company and the Third Avenue Railroad Company be requested to furnish the Commission, on or

before the 8th day of July, 1908, with a list showing the number and type of cars owned or operated by the companies, which they now represent, as of July 1, 1907, and the number of cars destroyed or discarded from July 1, 1907, to the present date; also showing what cars were under order July 1, 1907, or delivered since that time, and what orders for cars remain unfilled at the present time.

**Street Railroad Corporations.— Notice of proposed purchases of cars, brakes, fenders or other equipment.**

Hearing Order No. 465.  
Opinion of Commissioner Maltbie.  
Final Order No. 584.

In the Matter  
of

The hearing on the motion of the Commission on the question whether NEW YORK CITY RAILWAY COMPANY and METROPOLITAN STREET RAILWAY COMPANY, or ADRIAN H. JOLINE and DOUGLAS ROBINSON, their Receivers; THIRD AVENUE RAILROAD COMPANY, DRY DOCK, EAST BROADWAY AND BATTERY RAILROAD COMPANY and the FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILWAY COMPANY, or FREDERICK W. WHITRIDGE, their Receiver; THE UNION RAILWAY COMPANY, or FREDERICK W. WHITRIDGE, its Receiver; NEW YORK CITY INTERBOROUGH RAILWAY COMPANY, SOUTHERN BOULEVARD RAILROAD COMPANY, YONKERS RAILROAD COMPANY, or LESLIE SUTHERLAND, its Receiver; WESTCHESTER ELECTRIC RAILROAD COMPANY, or J. ADDISON YOUNG, its Receiver; INTERBOROUGH RAPID TRANSIT COMPANY, CITY ISLAND RAILROAD COMPANY, PELHAM PARK RAILROAD COMPANY, NEW YORK AND QUEENS COUNTY RAILWAY COMPANY, LONG ISLAND ELECTRIC RAILWAY COMPANY, NEW YORK AND LONG ISLAND TRACTION COMPANY, OCEAN ELECTRIC RAILWAY COMPANY, CONEY ISLAND AND BROOKLYN RAILROAD COMPANY, VAN BRUNT STREET AND ERIE BASIN RAILROAD COMPANY, BROOKLYN RAPID TRANSIT COMPANY, BROOKLYN HEIGHTS RAILROAD COMPANY, BROOKLYN UNION ELEVATED RAILROAD COMPANY, NASSAU ELECTRIC RAILROAD COMPANY, BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, CONEY ISLAND AND GRAVESEND RAILWAY COMPANY, SEA BEACH RAILWAY COMPANY, SOUTH BROOKLYN RAILWAY COMPANY, BUSH TERMINAL RAILROAD COMPANY, RICHMOND LIGHT AND RAILROAD COMPANY, STATEN ISLAND MIDLAND RAILWAY COMPANY, BRIDGE OPERATING COMPANY, MARINE RAILWAY COMPANY and SOUTHFIELD BEACH RAILWAY COMPANY should not be required to give the Commission a reasonable notice in writing of any proposed purchase of cars, brakes, fenders or other equipment.

HEARING ORDER No. 465.  
May 8, 1908.

*It is hereby ordered that a hearing be had on the 22d day of May, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire whether, in order to enable the Commission properly to perform its duty of having general supervision of all street railroads in the city of New York and of keeping informed as to their general condition and the manner in which they are operated, as respects adequacy, security and accommodation and to determine whether their equipment, appliances and devices used or intended to be used in connection with the transportation of passengers, freight or property are safe, proper and adequate, said street railroad*

corporations or their receivers, if any, should not be required to give reasonable notice in writing to the Commission of any proposed purchase by them, or any of them, of any cars, brakes, fenders or other equipment and submit the plans and specifications pertaining to such proposed purchase.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the New York City Railway Company and Metropolitan Street Railway Company, or Adrian H. Joline and Douglas Robinson, their receivers; Third Avenue Railroad Company, Dry Dock, East Broadway and Battery Railroad Company and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or Frederick W. Whitridge, their receiver; The Union Railway Company, or Frederick W. Whitridge, its receiver; New York City Interborough Railway Company, Southern Boulevard Railroad Company, Yonkers Railroad Company, or Leslie Sutherland, its receiver; Westchester Electric Railroad Company, or J. Addison Young, its receiver; Interborough Rapid Transit Company, City Island Railroad Company, Pelham Park Railroad Company, New York and Queens County Railway Company, Long Island Electric Railway Company, New York and Long Island Traction Company, Ocean Electric Railway Company, Coney Island and Brooklyn Railroad Company, Van Brunt Street and Erie Basin Railroad Company, Brooklyn Rapid Transit Company, Brooklyn Heights Railroad Company, Brooklyn Union Elevated Railroad Company, Nassau Electric Railroad Company, Brooklyn, Queens County and Suburban Railroad Company, Coney Island and Gravesend Railway Company, Sea Beach Railway Company, South Brooklyn Railway Company, Bush Terminal Railroad Company, Richmond Light and Railroad Company, Staten Island Midland Railway Company, Bridge Operating Company, Marine Railway Company and Southfield Beach Railway Company be given at least ten days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order and that at such hearing said companies be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to matters aforesaid.

Hearings were held May 22d and June 2d.

\* [Street railway companies should be required to file with the Commission the general plans of cars, brakes, fenders or other car equipment which they propose to purchase.]

#### OPINION OF COMMISSION.

(Adopted June 16, 1908.)

#### COMMISSIONER MALTBY:

As the Commissioner to whom was referred the taking of testimony under Order No. 465 to determine whether the street railway companies should be required to file with the Commission the general plans of cars, brakes, fenders or other car equipment which they propose to purchase, I beg to submit the following report:

The fundamental problem in this matter is the time-worn question whether prevention is preferable to cure. To state the question is to answer it, but as two corporation representatives raised several objections to its adoption at the hearings, I consider it necessary that the Commission be advised thereof.

The adoption of the hearing order grew out of certain facts which were brought to the attention of the Commission by the Transportation Bureau. Since the Commission has been in existence cars have been purchased and put in operation upon certain lines which had no fenders to prevent persons from being run over in case they were knocked down by the cars. In other cases the steps have been so high as seriously to inconvenience passengers and possibly to injure persons in delicate health. In others headlights have been omitted and no arrangements made for their installation. Hand brakes have been put in use upon which there were no safety chains. If the single chain should break upon a steep hill, there would be no adequate way of stopping the car before it raced to the bottom and injured or killed possibly a number of passengers. Defective wiring has been found, and this may have been the cause of some of the car barn fires which have taken place in New York within the last few years.

All these objectionable features and others which might be mentioned, could have been prevented if the engineers of the Commission had had an opportunity of examining the plans before the cars were ordered or immediately thereafter. Of course the Commission has the power to require that the cars operated shall be put in a safe and proper condition, but to remedy defects after the cars have been delivered and put in operation means not only that the companies will be put to considerable expense which might have been avoided, but that the public will be seriously inconvenienced until the cars are ordered off for repair, and it is quite

\* See footnote, page 9.

possible that their temporary use may result in loss of life and injury to property. The principal reasons, therefore, why, in my opinion, plans of cars, brakes, fenders and other car equipment should be submitted to the Commission prior to or at the time they are ordered, are that the public will be saved great inconvenience, injury and damage thereby; that necessary expense by companies will be avoided; and that indirectly, as the public must ultimately pay the bill, those who use the road will be benefited financially.

A representative of one of the companies stated,— "Now, as far as the companies that I represent are concerned, we distinctly do not wish to have you try to save us that amount of money. We prefer to take the chances." Only one other representative echoed this opinion and I believe that the majority of the companies will welcome anything that will save them money and lessen any inconvenience or injury to the public. But if the above quotation represents the opinion of the directors of any company, I believe it to be the duty of the Commission, as well as its power, to say that if the company *voluntarily* does not wish to save money in this way, the Commission will so act as to oblige it to do so.

Most of the companies to be affected by such an order have expressed their willingness to comply with it and their belief that it will result in good to the companies and to the public, but representatives of three companies opposed it at the hearings upon the grounds that the filing of plans with the Commission would limit the selection of the companies to a few standard designs, would increase the cost of purchases and interfere with the work of the companies. As to the first objection there is, in my opinion, nothing in the order which would bring about such a result. Of course the Commission will call the attention of the companies to unsafe or improper devices, and naturally these will be eliminated; but among the many devices and designs that have been evolved by car companies that are safe, adequate and proper, the companies will have an unlimited opportunity for selection.

I do not believe also that the filing of plans will increase the cost. The company is not obliged to submit them until after the contract has been made, and how such a requirement will produce the result asserted was not explained at the hearings and I cannot imagine.

Of course, naturally, there will be some little inconvenience, but as many copies of each plan for cars and car equipment are made and are quite generously distributed, the additional work of filing one set with the Commission will be insignificant.

In my opinion the case is very similar to that of the requirement of the city for the filing with the building department the plans for all structures. This procedure has been in operation for years and has worked no harm, but great good. As a matter of fact, it has not limited the variety of designs except so far as the safety and welfare of the community has demanded. It has not increased the cost of good buildings, nor has it inconvenienced the builders, except in cases where something improper was proposed. I have directed therefore that an order be prepared, which I transmit herewith.

Thereupon the following final order was issued:

**FINAL ORDER No. 584.**

June 18, 1908.

An order known as Order No. 465 having been duly made on the 8th day of May, 1908, that a hearing be had to inquire whether, in order to enable the Commission properly to perform its duty of having general supervision of all street railroad's in the city of New York and of keeping informed as to their general condition and the manner in which they are operated, they should not be required to give reasonable notice in writing to the Commission of any proposed purchase by them of any cars, brakes, fenders or other equipment and submit the plans and specifications pertaining to such purchase, and the said order having been duly served on New York City Railway Company and Metropolitan Street Railway Company, and Adrian H. Jolline and Douglas Robinson, their Receivers; Third Avenue Railroad Company, Dry Dock, East Broadway and Battery Railroad Company and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, and Frederick W. Whitridge, their receiver; The Union Railway Company, and Frederick W. Whitridge, its receiver; New York City Interborough Railway Company, Southern Boulevard Railroad Com-

pany, Yonkers Railroad Company, and Leslie Sutherland, its receiver; Westchester Electric Railroad Company, and J. Addison Young, its receiver; Interborough Rapid Transit Company, City Island Railroad Company, Pelham Park Railroad Company, New York and Queens County Railway Company, Long Island Electric Railway Company, New York and Long Island Traction Company, Ocean Electric Railway Company, Coney Island and Brooklyn Railroad Company, Van Brunt Street and Erie Basin Railroad Company, Brooklyn Rapid Transit Company, Brooklyn Heights Railroad Company, Brooklyn Union Elevated Railroad Company, Nassau Electric Railroad Company, Brooklyn, Queens County and Suburban Railroad Company, Coney Island and Gravesend Railway Company, Sea Beach Railway Company, South Brooklyn Railway Company, Bush Terminal Railroad Company, Richmond Light and Railroad Company, Staten Island Midland Railway Company, Bridge Operating Company, Marine Railway Company and Southfield Beach Railway Company, and said hearing having been duly held on the 22d day of May, 1908, and the 2d day of June, 1908, before Hon. Milo R. Maitbie, Commissioner, Mr. Alfred A. Gardner appearing for the Interborough Rapid Transit Company and the New York and Queens County Railway Company, Mr. Adrian H. Larkin appearing for the Staten Island Midland Railway Company and the Richmond Light and Railroad Company, Mr. Arthur A. Dutton representing the Brooklyn Rapid Transit Company, Mr. C. L. Addison representing the Ocean Electric Railway Company, and Mr. Henry H. Whitman, Assistant Counsel to the Commission, attending, and the Commission being of the opinion, after said hearing, that the statements and drawings hereinafter directed to be furnished ought reasonably to be furnished in order to enable the Commission properly to perform its duty and to carry out the purposes of the Public Service Commissions Law, it is

**Ordered**, That each of said street railroad companies, or its receiver or receivers, if any, be and they hereby are directed before or within five days, after the day on which any contract for the purchase of any new car equipment (meaning thereby new car bodies, new trucks, new electrical car equipment, new brakes, new fenders, new wheel guards, new headlights and new gates), is entered into by it, or by its receiver or receivers, if any, to furnish to the Electrical Engineer of the Commission a memorandum, including general drawings showing the character and type of said new car equipment so contracted for or about to be contracted for. This order shall not be construed as covering purchases of materials required for making ordinary repairs to car equipment, as above defined, nor as requiring information as to prices to be paid for said new car equipment, nor the names of the manufacturers or dealers with whom such contracts are made or about to be made, nor as requiring detailed working drawings; but this order shall be construed as requiring such memoranda including general drawings as are necessary to enable the Commission to determine whether said new car equipment, so contracted for, or about to be contracted for, will be, in its opinion, safe, proper and adequate for the transportation of persons or property; and it is further

**Ordered**, That this order shall take effect on June 30, 1908, and shall continue in force for a period of two years; and it is further

**Ordered**, That each of said street railroad corporations, or its receiver or receivers, if any, notify the Commission in writing within five days after the service of this order whether its terms are accepted and will be obeyed.

#### Street Railroad Corporations.—Number of cash fares and number of transfers collected.

In the Matter  
of

Information to be furnished by every STREET RAILROAD CORPORATION under the jurisdiction of the Public Service Commission for the First District as to number of cash fares and number of transfers collected, etc., for the twelve months ending June 30, 1908.

ORDER No. 603.  
June 26, 1908.

**It is hereby ordered**, That every Street Railroad Corporation under the jurisdiction of this Commission shall, on or before July 15, 1908, file a return with the Commission showing for the twelve months ended June 30, 1908, as to each route (1) the number of cash passenger fares, and (2) number of transfers collected in that period; (3) the number of passengers transported in chartered cars, and (4) the number of employees and other persons carried free; also (5) the total number of miles run by regular passenger cars, and (6) by special or chartered cars.

**Central Park, North and East River Railroad Company.—**  
**Metropolitan Street Railway Company—Receipts and expenses for a thirty-day period.**

In the Matter  
of the

Filing with this Commission by the CENTRAL PARK, NORTH AND EAST RIVER RAILROAD COMPANY, and ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of the METROPOLITAN STREET RAILWAY COMPANY, of a sworn statement of the receipts and expenses of lines operated by said companies, for thirty days from midnight of August 6, 1908.

ORDER No. 669.  
August 7, 1908.

*Resolved*, That Adrian H. Joline and Douglas Robinson, as Receivers of the Metropolitan Street Railway Company, and the Central Park, North and East River Railroad Company be, and they hereby are, each of them, required to keep for a period of thirty days from and after midnight of August 6, 1908, when the separate operation of the last named railroad company began, a separate record of their receipts and expenses as follows, to wit:

To be kept by the said receivers, a record of the said earnings and expenses upon each separate line operated by them;

To be kept by the said Central Park, North and East River Railroad Company a separate record of the receipts and expenses upon each separate line operated by it; and that said Adrian H. Joline and Douglas Robinson as such receivers, and that said Central Park, North and East River Railroad Company file with the Secretary of the Public Service Commission for the First District, within ten days after the expiration of the said period of thirty days from midnight of August 6, 1908, a sworn statement showing the receipts and expenses upon every separate line operated by them respectively as aforesaid.

**Central Park, North and East River Railroad Company.—**  
**Receipts and expenses of lines and number of car miles operated.**

In the Matter  
of the

Filing by the CENTRAL PARK, NORTH & EAST RIVER RAILROAD COMPANY of a sworn statement of the receipts and expenses of lines operated and of the car miles operated by said Company for the thirty days ending September 30, 1908.

ORDER No. 804.  
October 27, 1908.

*Ordered*, That the Central Park, North and East River Railroad Company be and it hereby is required to file with the Secretary of the Public Service Commission for the month ending September 30, 1908, on or before October 29, 1908, a sworn statement showing the receipts and detailed expenses upon every separate line operated by the said company and the car miles operated for each day of said month and for the entire month.

**Interborough Rapid Transit Company.—Ticket sales at Fulton Street, Wall Street, Bowling Green and Borough Hall Subway stations from January 2 to 16, 1908.**

In the Matter  
of  
Information to be furnished by the INTERBOROUGH RAPID TRANSIT COMPANY, with respect to ticket sales at Fulton Street, Wall Street, Bowling Green and Borough Hall Subway Stations, from January 2 to 16, 1908.

ORDER No. 208.  
January 17, 1908.

*Resolved*, That the Interborough Rapid Transit Company be requested to furnish this Commission the ticket sales on the south-bound platforms of the Fulton and Wall street stations, and at the Bowling Green station and the Brooklyn bridge station, from January 2 to January 16, 1908, inclusive; and the ticket sales at the Borough Hall station in Brooklyn from the opening to date.

**Staten Island Railway Company.—Earnings and operating expenses.**

In the Matter  
of  
Information to be supplied by the STATEN ISLAND RAILWAY COMPANY in answer to the questions set forth herein.

ORDER No. 799.  
October 23, 1908.

*Resolved*, That the Staten Island Railway Company be and it hereby is required to make and file with the Secretary of the Public Service Commission for the First District specific answers to each of the following questions, said answers to be filed on or before October 28, 1908:

1. What were the total gross earnings from operation of all ferry properties owned or operated by the Staten Island Railway Company for each of the years 1900 to 1907, inclusive?

2. Of the total gross earnings asked for in question one above, how much represented gross earnings from passenger business for each of the years 1900 to 1907, inclusive?

3. Of the total gross earnings asked for in question one above, how much represented gross earnings other than those derived from passenger business in each of the years 1900 to 1907, inclusive?

4. What were the total operating expenses of all ferry properties owned or operated by the Staten Island Railway Company for each of the years 1900 to 1907, inclusive?

5. Of the total operating expenses asked for in question four above, how much represented charges for repairs and maintenance of all ferry properties owned or operated by the Staten Island Railway Company for each of the years 1900 to 1907, inclusive?

6. Of the total operating expenses asked for in question four above, how much represented charges for renewals of all ferry properties owned or operated by the Staten Island Railway Company for each of the years 1900 to 1907, inclusive?

7. Of the total operating expenses asked for in question four above, how much represented charges for all operating expenses other than repairs, renewals and maintenance of all ferry properties owned or operated by the Staten Island Railway Company for each of the years 1900 to 1907, inclusive?

8. What was the total of all sums paid to the Staten Island Railway Company from June 30, 1904, to June 30, 1907, as a result of the sale of ferry properties in which the Staten Island Railway Company had an interest?

9. Was the Staten Island Railway Company entitled to any other sums as a result of the sale of ferry properties from June 30, 1904, to June 30, 1907?

10. What was the nature of the interest of the Staten Island Railway Company in ferry boats acquired by the city of New York or otherwise disposed of between June 30, 1904, and June 30, 1907?

11. Did your report for the years ending June 30, 1900, and June 30, 1901, correctly state the train miles run by the Staten Island Railway Company?

12. What was the total number of passenger train miles run by the Staten Island Railway Company for the years ending June 30, 1900, and June 30, 1901?

13. What was the total number of freight train miles run by the Staten Island Railway Company for the years ending June 30, 1900, and June 30, 1901?

14. What was the total number of all other train miles run by the Staten Island Railway Company for the years ending June 30, 1900, and June 30, 1901?

**Interborough Rapid Transit Company.—Progress in construction of additional stairways at Cortlandt and Greenwich streets.**

ORDER No. 209.

January 17, 1908.

*Resolved*, That the Interborough Rapid Transit Company be required to make answer as to the progress being made towards building the additional stairways at Cortlandt and Greenwich streets.

**Interborough Rapid Transit Company.—Progress in making changes at the One Hundred and Thirty-eighth and One Hundred and Forty-ninth Streets stations of the Third Avenue elevated line.**

ORDER No. 218.

January 24, 1908.

*Resolved*, That the Interborough Rapid Transit Company be required to inform this Commission in one week from the receipt of this resolution as to the present condition of the changes at the One Hundred and Thirty-eighth and One Hundred and Forty-Ninth Street stations of the Third Avenue Elevated heretofore authorized, and to give the earliest probable date when such changes will be completed.

**New York and Portchester Railroad Company.—Progress made in constructing line.**

Hearing Order No. 521.  
Extension Order No. 546.

In the Matter  
of

Information to be supplied by the NEW YORK AND PORTCHESTER RAILROAD COMPANY with respect to compliance by said company with the Covenants and Agreements contained in a contract entered into by said company with the City of New York May 31, 1908.

ORDER No. 521.  
May 22, 1908.

Whereas the City of New York by a contract entered into with the New York and Portchester Railroad Company May 31, 1906, granted to said company a franchise to construct and operate a railroad in the borough of The Bronx from or near the intersection of Southern Boulevard and Willis avenue northerly to the city line; and

Whereas it was one of the conditions of the grant that within two years from the date thereof the company should expend or cause to be expended the sum of at least eight hundred thousand dollars (\$800,000), upon the actual construction of said railroad between Westchester avenue at or near One Hundred and Sixty-seventh street and the city line; and

Whereas said two years' period will expire on May 31, 1908, therefore

*Resolved*, That New York and Portchester Railroad Company be requested to inform this Commission in writing, within ten (10) days after receipt of this resolution, to what extent and in what manner it has complied with the covenants, conditions and agreements in the above mentioned contract contained, and by the

said company performed, and in particular with the covenants regarding the expenditure of said eight hundred thousand dollars (\$800,000) upon construction within two years.

Upon application of the company the following extension order was issued:

EXTENSION ORDER No. 546.

June 2, 1908.

An order, No. 521, having been made herein on or about the 22d day of May, 1908, requesting the New York and Portchester Railroad Company to inform the Public Service Commission for the First District, within ten (10) days after receipt of said order, to what extent and in what manner it has complied with the covenants and agreements in the above-mentioned contract contained and the said New York and Portchester Railroad Company having, on June 1, 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*. That the time within which the New York and Portchester Railroad Company shall comply with the terms of Order No. 521 be, and the same hereby is, extended to and including June 12, 1908.

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New York, Westchester and Boston Railway Company.—Failure to construct the Westchester road.

ORDER FOR ANSWER No. 274.

February 21, 1908.

Whereas it appears that the city of New York, on August 2, 1904, granted a franchise to the New York, Westchester and Boston Railway Company for the construction of a four track electric railway from the Harlem river to the city line, and

Whereas it was one of the conditions of said grant that the road should be completed from the northerly line of the city as far south as the intersection of the Southern Boulevard and Westchester avenue, within five years from said date, and

Whereas it appears that after this work was undertaken, construction has been discontinued since 1906, and

Whereas said five years limitation will expire on August 2, 1909, and

Whereas it appears that control of the said Westchester Railway is now held by the New York, New Haven and Hartford Railway Company,

*Therefore resolved*, That the New York, New Haven and Hartford Railroad Company be requested to inform this Commission in writing within ten days from receipt of this resolution as to the following points:

First—Why has the work of constructing the Westchester road been discontinued since 1906?

Second—When will the work of construction be resumed?

Third—When will the section from One Hundred and Seventy-seventh street to the city line be completed?

Fourth.—When will the road be put in operation over that section of the route?

Fifth—When will the section of the road from One Hundred and Seventy-seventh street to the Harlem river be put in operation?

Sixth—When will the section of the road from the city line through the Westchester localities be put in operation?

The company answered March 5th, stating that work was suspended because of litigation; that the validity of the Westchester charter was in question; that the work of construction would be resumed and completed and operation begun as soon as the litigation was closed.

**Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company.**— Certified copies of conductors' day cards to be filed.

In the Matter  
of

Certified copies of CONDUCTORS' DAY CARDS to be furnished by the FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILROAD COMPANY, covering movement of cars on Monday, January 6, 1908.

ORDER No. 200.  
January 10, 1908.

*Resolved*, That the Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company be requested to furnish the Commission certified copies of their conductors' day cards, covering the complete movement of the cars on their line on Monday, January 6, 1908.

**Brooklyn Heights Railroad Company.**— Operation of cars on certain lines.

In the Matter  
of the

Filing by the BROOKLYN HEIGHTS RAILROAD COMPANY of certain facts relative to the operation of cars on the routes herein mentioned.

FILING ORDER CASE 1018.  
December 11, 1908.

*Resolved*, That the Brooklyn Heights Railroad Company be required:

1. To file on or before December 14, 1908, the operating schedule of cars as of December 11, 1908, on the Flushing Avenue Line and the Putnam Avenue and Halsey Street Line of the said company, and a statement of the exact length of the routes as operated;

2. To file daily for a period of one month from December 14, 1908, a sworn statement showing for the preceding day the following facts as to the operation of the said routes:

- (a) Number of cars in use on the routes,
- (b) Number of full trips made,
- (c) Number of car miles run,
- (d) Number of passengers carried,
- (e) Seating capacity of the types of cars in use on the routes.

**Brooklyn Rapid Transit Company.**— Discontinuance of the Park Row service on the St. Johns Place, Third Avenue and Vanderbilt Avenue lines.

In the Matter  
of the

Discontinuance of the PARK ROW SERVICE on the St. Johns Place, Third Avenue and Vanderbilt Avenue lines.

ORDER No. 475.  
May 8, 1908.

*Resolved*, That the Brooklyn Rapid Transit Company be required to make answer on or before May 14th to the following:

1. The reasons for the discontinuance of the Park Row service on the St. Johns Place, Third Avenue and Vanderbilt Avenue lines.
2. Reasons for the increasing of the service through Fulton street and the apparent decrease of service through Livingston street.

**Brooklyn Union Elevated Railroad Company.**—Number of passengers, running time and headway of trains upon certain lines.

In the Matter  
of  
Information from the BROOKLYN UNION ELEVATED RAILROAD COMPANY regarding the number of passengers, running time and headway of trains upon the roads herein specified.

ORDER No. 187.  
January 4, 1908.

*Resolved.*, That the Brooklyn Union Elevated Railroad Company be requested to furnish the following information:

1. Statement of the number of passengers by the month carried on the Brighton Beach line during the year ending December 31, 1907.
2. Statement as to whether these figures are based on cash fares, or, if otherwise, on what basis.
3. Statement of the number of passengers, if possible, carried between New York and Kings Highway, and also between Kings Highway and Brighton Beach or points beyond.
4. Statement of running time between Culver depot, Kings Highway, Franklin avenue, Sands street and New York, as well as trains running to and from Fulton Ferry for the full twenty-four hours of week days and Sundays.
5. Schedule of headway of trains and number of cars going to make up trains (if not shown in the above) as operated between New York and Kings Highway; also between New York and Brighton Beach.

**Brooklyn Union Elevated Railroad Company.**—Number of trains operated on Brooklyn Bridge during rush hours.

In the Matter  
of  
Information to be furnished by the BROOKLYN UNION ELEVATED RAILROAD COMPANY as to the number of trains operated and to be operated on the Brooklyn Bridge during rush hours.

ORDER No. 198.  
January 10, 1908.

*Resolved.*, That the Brooklyn Union Elevated Railroad Company be required to make answers by Saturday, January 11, 1908, at twelve o'clock, to the following questions:

1. Whether the number of trains operated on the Brooklyn Bridge during rush hours on January 9, 1908, was greater or less than usual and if the maximum was not operated, the reasons therefor.
2. What are the plans of the company as to the number of local trains to be operated on the Brooklyn Bridge during rush hours, until such time as the company will begin the operation of through trains.

**Coney Island and Brooklyn Railroad Company.**—Operation of DeKalb avenue line.

In the Matter  
of the  
Filing by the CONEY ISLAND AND BROOKLYN RAILROAD COMPANY of certain facts relative to the operation of cars on the routes herein mentioned.

CASE No. 1017.  
FILING ORDER.  
December 11, 1908.

*Resolved.*, That the Coney Island and Brooklyn Railroad Company be required

1. To file on or before December 14, 1908, the operating schedule of cars as of December 11, 1908, on the DeKalb Avenue line of the said company, and a statement of the exact length of the route as operated;

2. To file daily for a period of one month from December 14, 1908, a sworn statement showing for the preceding day the following facts as to the operation of the said route:

- (a) Number of cars in use on the route.
- (b) Number of full trips made.
- (c) Number of car miles run.
- (d) Number of passengers carried.
- (e) Seating capacity of the types of cars in use on the route.

**Interborough Rapid Transit Company.— Operation of trains through subway at Twentieth street on January 11, 1908.**

In the Matter  
of

Information to be furnished by the INTERBOROUGH RAPID TRANSIT COMPANY in respect to operation of trains through the Subway at Twentieth street on Saturday, January 11, 1908.

ORDER No. 199.  
January 11, 1908.

*Resolved.* That the Interborough Rapid Transit Company be required to make answer to the following questions by Monday, January 13, 1908, at eleven A. M.:

1. At what hour did the company or any of its officers receive orders or directions from the fire, police or other city departments, not to operate trains through the Subway at Twentieth street on Saturday, January 11?

2. What plans were thereupon made to give notice to the public that through service was not to be rendered?

3. At what stations was the public given notice of lack of through service, outside of the stations, or before members of the public had bought tickets or had deposited them in ticket boxes; and at what stations was notice given only on station platforms, of the limitation of service?

4. What plans were made for increasing service on the elevated lines, in view of the lack of service on the Subway?

**Street Railroads.— Inventory of property.**

ORDER No. 618.  
June 29, 1908.

*Resolved.* That each street railroad in the boroughs of Manhattan and the Bronx be required to furnish on or before July 15th, an inventory of all property owned by it as of June 30, 1908.

**Street Railroad Corporations.— Filing of tariff schedules.**

Order No. 708.  
Extension Order No. 722.

In the Matter  
of the

Filing with the Public Service Commission for the First District of tariff schedules by STREET RAILROAD CORPORATIONS in pursuance of section 28 of the Public Service Commissions Law.

ORDER No. 708.

*It is hereby ordered.* That the regulations contained in Tariff Circular No. 1 be adopted by this Commission prescribing, from and after September 1, 1908, the form, and governing the construction and filing of schedules of fares for passenger service of street railroad corporations subject to the jurisdiction of this Commission.

*Ordered.* That such street railroad corporations file, in conformity with the said circular and on or before September 15, 1908, schedules, effective upon filing.

showing fares, transfers, and all regulations relating thereto actually in effect for thirty days prior to the said September 15, 1908, changes therefrom to be filed in accordance with the regulations with full notice unless otherwise ordered.

*Ordered*, That the provisions of Order No. 53 in so far as they relate to street railroads be rescinded.

#### EXTENSION ORDER No. 722.

September 11, 1908.

An order of the Commission, No. 708, having been made herein on or about the 28th day of August, 1908, ordering and directing that all street railroad corporations subject to the jurisdiction of this Commission file, in conformity with tariff circular No. 1 adopted by this Commission, and on or before September 15, 1908, schedules, effective on filing, showing fares, transfers, and all regulations relating thereto, actually in effect for thirty days prior to said September 15, 1908; and application in writing having been made for an extension of such time within which to file said schedules.

Now, on motion made and duly seconded, it is

*Ordered*, That the time for filing the schedules above mentioned be, and the same hereby is, extended to and including the 1st day of October, 1908.

### New York, Westchester and Boston Railway Company.—

Inspection and examination of accounts, records and memoranda.

In the Matter  
of the

Inspection and examination of the accounts, records  
and memoranda of the NEW YORK, WEST-  
CHESTER AND BOSTON RAILWAY COMPANY  
and of the NEW YORK AND PORTCHESTER  
RAILROAD COMPANY.

ORDER No. 586.

June 16, 1908.

*It is ordered*, That Elwood T. Baker, who is employed by this Commission as an accountant, be designated and is hereby directed to inspect and examine the accounts, records and memoranda kept by the New York, Westchester and Boston Railway Company and the New York and Portchester Railroad Company, and all books of original entry, all ledgers, all balance sheets, and any and all other books showing or purporting to show the assets and liabilities of the corporations. And the said New York, Westchester and Boston Railway Company and the New York and Portchester Railroad Company are hereby directed and required to afford to said Elwood T. Baker access to all such accounts, records and memoranda.

*It is further ordered*, That this order shall take effect forthwith and continue in force for a period of six months from the date hereof.

### SUBWAY MATTERS.

#### OPINIONS OF COUNSEL.

\* [Building department of the city of New York has no jurisdiction over subway work.]

#### OPINION OF COUNSEL.

June 15, 1908.

Public Service Commission for the First District:

Sirs:—I have the letter of the Secretary of the 5th inst. transmitting a copy of the letter of Chief Engineer Pegram of the Rapid Transit Subway Construction Company to the Chief Engineer of the Commission dated May 29th, and Mr. Rice's letter to the Chairman of June 4th. From Mr. Pegram's letter it appears that the building department of the borough of Brooklyn refuses to allow the contractor for the construction of the Brooklyn-Manhattan Rapid Transit Railroad to carry out the Commission's plans for remodeling building No. 58 Joralemon street, in the borough of Brooklyn, to answer the requirements of a ventilating shaft for the

\* See footnote, page 9.

railroad unless detailed drawings are filed with it, and my opinion is asked whether it is necessary for the Commission to comply with this requirement.

This is simply another aspect of the question of the jurisdiction of the former Rapid Transit Board and of the Commission which has arisen so frequently in the past. The Rapid Transit Board has been consistently advised by its counsel, and the Counsel to the Commission has several times advised you to the same effect, that in all matters affecting rapid transit railroad construction, except where expressly limited by the Rapid Transit Act, the authority of the Rapid Transit Board and of the Commission, as its successor, was supreme. This position has also been taken by successive corporation counsel and was last year upheld by the Appellate Division of the Supreme Court in the case of *Rapid Transit Subway Construction Co. et al. against Coler et al.*, 121 App. Div. 250.

The claim of the building department in regard to rapid transit railroad construction was dealt with in an opinion of counsel to the Rapid Transit Board dated April 23, 1906, printed at page 4077 of Volume VII of the Board's minutes. There the building superintendent claimed jurisdiction over the underpinning of buildings along the line of the work, and that the contractors would have to file plans and specifications with the building department and obtain its permits to do the work. In that opinion the reason for the complete control of the Rapid Transit Board over its work is clearly stated as follows:

"It is quite plain that if the various city departments that have to do directly or indirectly with the control of the city's streets, could require the contractors to obey their orders, there would be endless and intolerable confusion and delay in construction. The bureaus of highways, of sewers and of buildings in the borough president's office, and the department of water supply, gas and electricity, might issue orders conflicting entirely with those of the Rapid Transit Commission, thus possibly paralyzing the work of construction. No danger to the public interest need follow from the fact that the Rapid Transit Commission is by law placed in paramount control of the work, for if the building superintendent or any other officer of the city government finds improper or dangerous conditions existing, he may notify the Rapid Transit Commission, who will doubtless act promptly in every proper case."

Although this matter affects a building and not the streets along the line of the work, the question of control over which has heretofore occupied the attention of counsel, the reasoning of the opinion referred to is conclusive on the present case, for the filing of plans and the obtaining of a permit necessarily presupposes the right of the building superintendent to exercise his discretion as to such plans and his idea of the proper remodelling of a building for the ventilating purposes of the railroad might differ radically from that of the Chief Engineer to the Commission, thus producing a confusion and a division of authority which it was one of the underlying purposes of the Rapid Transit Act to prevent.

I therefore advise the Commission that in my opinion the building superintendent is without jurisdiction over this matter.

Respectfully yours,  
 (Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

\* [Necessity for certification of subway contracts by comptroller. Certificate not necessary where requisition is made for less than full amount.]

#### OPINION OF COUNSEL.

May 11, 1908.

Hon. WILLIAM McCARROLL, *Commissioner:*

SIR:—In answer to your oral request for an opinion whether the comptroller of the city is required to certify contracts for the construction of rapid transit railroads, I desire to advise you as follows:

Certification of contracts entered into by the various city departments is required by section 149 of The Greater New York Charter, which in part provides:

"No contract hereafter made, the expense of the execution of which is not by law or ordinance, in whole or in part, to be paid by assessments upon the property benefited, shall be binding or of any force, unless the comptroller shall endorse thereon his certificate that there remains unexpended and unapplied, as herein provided, a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same."

Rapid Transit contracts are, however, expressly excepted from the operation of this provision by virtue of amendments to section 149, adopted as part of the revision of 1901, and to section 45 adopted as Chapter 7 of the Laws of 1900, and any duty the comptroller may be under to certify rapid transit contracts cannot rest upon the authority given him by section 149, but is dependent on section 45 of The Greater New York Charter and section 37 of the Rapid Transit Act. The history of these provisions throws such a light on this question that it is necessary to review it at some length.

Prior to 1801 the power to construct rapid transit railroads was in rapid transit commissions which were appointed from time to time by the mayor, but this was changed as regards the city of New York by the enactment of the Rapid Transit Act of that year which contemplated the creation of a single permanent commission, and even more radically by the amendments of 1894 to that act which took the control of such construction out of the hands of the local authorities and

\* See footnote, page 9.

lodged it in a board appointed by the Legislature. To make the board's authority complete, the Legislature gave it ample power to carry on the work independently of other boards or officials, and itself prescribed the limit of the amount of indebtedness which the board could incur on behalf of the city at fifty-five million dollars. The only province therefore of the municipal authorities after the form of the contract had been approved by the corporation counsel was to advance the necessary means upon the requisition of the Rapid Transit Board.

Section 37 of the Rapid Transit Act, as amended by chapter 519 of the Laws of 1895, provided in part:

"For the purpose of providing the necessary means for such construction \* \* \* the board of estimate \* \* \* from time to time, and as the same shall be necessary, and upon the requisition of said board of rapid transit railroad commissioners shall direct the comptroller, \* \* \* and it shall thereupon become his duty, to issue the bonds of said city at such a rate of interest, not exceeding three and one-half per centum per annum, as said board of estimate and apportionment \* \* \* may prescribe. \* \* \* The amount of bonds authorized to be issued and sold by this section shall not exceed fifty millions of dollars, par value, without the consent of the Legislature first had and obtained, provided, however, that such amount shall be increased by a sum not exceeding five millions of dollars, if the board of rapid transit railroad commissioners shall certify that such increase is made necessary by payments required for any lands, property, rights, terms, easements or privileges which shall be acquired by the said city as herein-after provided."

This was the financial provision of the Rapid Transit Act as it existed in 1900 at a time immediately prior to the execution of the contract with Mr. McDonald for the construction of the present Manhattan-Bronx Rapid Transit Railroad. It will be noted that the maximum amount of bonds to be issued was fixed by legislative enactment, and the only duty of the board of estimate was "from time to time, and as the same shall be necessary," to "direct the comptroller \* \* \* to issue \* \* \* bonds." The theory of the act evidently being that the maximum expenditure being fixed, the rapid transit board should call on the board of estimate for funds as they were needed, the intention being to provide for carrying on the work without coming into conflict with the debt limit provision of the Constitution. The provision for the construction of the railroad by sections was drawn with this end in view, and it seems to me the framers of the act contemplated the requisitioning of funds as the work progressed without perhaps embarrassing the city by an appropriation at the outset of the many million dollars necessary to complete the work.

At that time section 149 of The Greater New York Charter was in force but without the proviso excepting the rapid transit board from its provisions, and when the time came for making the contract with Mr. McDonald the question of certification proved most embarrassing. To obviate this difficulty a bill was presented to and passed by the Legislature which was explained in a memorial addressed to Governor Roosevelt, printed in full at pages 876 to 880 of Volume II of the minutes of the Rapid Transit Board. On page 878 it is stated:

"On looking into the statutes, the comptroller saw two apparent difficulties:

(a) The Rapid Transit Act plainly provided that the bonds should be issued by the board of estimate and apportionment or 'other local authority' so that it was tolerably apparent that the vote of the municipal assembly would be necessary for the issuance of the bonds required to pay for the road.

(b) The Greater New York Charter in general terms provided that no contract should be valid unless endorsed with a certificate which the comptroller could not truthfully give in respect to the Rapid Transit contract, and doubted whether the proviso of section 45 covered this point.

Accordingly, the bill recently passed by both houses of the Legislature was drafted. To meet the first point above the bill provides in express terms that the vote of the municipal assembly shall not be necessary thus doing away with this objection.

As to the second point, the comptroller is of the opinion that for the orderly conduct of the business of his office it is very important that the system established by the Greater New York Charter of making his certificate essential to the validity of each contract, and of keeping a record of each contract, shall be maintained. This is a matter of the routine of his office. In order to meet these views, in which the mayor fully concurs, the bill was drawn in its present form, so as to provide that the Rapid Transit Commissioners in the city of New York might make one requisition for the entire amount of bonds necessary to the completion of the contract. This they could not do under the existing act which provides (Laws of 1895, chapter 519, section 12) that the Board shall make requisition for bonds "from time to time as the same shall be necessary." It is further provided by the bill now before you that when such requisition is approved by the board of estimate and apportionment, the comptroller shall certify the contract, and that no further certificate shall be necessary, but that the bonds shall only be disposed of from time to time as may be necessary to meet the payments due to the contractors."

The bill which was enacted into law as chapter 7 of the Laws of 1900 took the form of an amendment to section 45 of the charter, which although changed by later amendments is, in so far as it affects this question, the same as originally drawn, and provided:

"The board of estimate and apportionment and the comptroller of the city of New York shall, anything herein contained to the contrary notwithstanding, be subject to all the duties and obligations prescribed in said chapter four of the

laws of eighteen hundred and ninety-one as amended for the board of estimate and apportionment and comptroller therein mentioned. Upon the execution of any contract made pursuant to chapter four of the laws of eighteen hundred and ninety-one as amended, the board of rapid transit railroad commissioners may, in its discretion, make request upon the board of estimate and apportionment for the authorization of such corporate stock, either for such amounts from time to time as they shall deem the progress of the work to require, or for the full amount sufficient to pay the entire estimated expense of executing such contract. In case they shall make requisition for the entire amount, the comptroller shall endorse on the contract his certificate that funds are available for the entire contract whenever such stock shall have been authorized to be issued by said board of estimate and apportionment; and in such case such stock may be issued from time to time thereafter in such amounts as may be necessary to meet the requirements of such contract. The certificate of the comptroller, mentioned in section one hundred and forty-nine of this act, shall not be necessary to make such contract binding on the city of New York."

It will therefore be seen that to meet the wishes of the city officials the Rapid Transit Board was empowered to make requisition for the full amount, but at the same time retaining the right given both by section 37 and by the amendment to section 45 to requisition funds as they were needed. If the full amount was asked for, a certificate, different however from that required for the usual city contract, was provided for; but if the full amount was not asked for, then no certificate was necessary.

Since 1900 section 37 of the Rapid Transit Act has been the subject of important amendments, the one most affecting this question being the one introduced by chapter 562 of the Laws of 1904, which removed the legislative restriction upon the amount of bonds to be issued, and left the matter of fixing the maximum amount of rapid transit expenditures in the board of estimate. Section 37 now provides in part:

"The amount of bonds authorized to be issued and sold by this section shall not exceed the limit of amount which shall be prescribed by the board of estimate and apportionment or such other local authority having power to make appropriations of moneys to be raised by taxation; and no contract \* \* \* shall be made unless and until such board of estimate and apportionment or such other local authority shall have consented thereto and prescribed a limit to the amount of bonds callable for the purposes of this section which shall be sufficient to meet the requirements of such contract in addition to all obligations theretofore incurred and to be satisfied from such bonds."

Although it has been the practise of the Rapid Transit Board to make requisition for the full amount of each contract, and although it might seem from a first reading of this provision that to prescribe a limit to the amount to be expended required such a course to be followed, I deem it clear from the history of this legislation and from the other provisions of this section, requiring the board of estimate to make appropriations from time to time, and the further provision that the limit prescribed shall be sufficient to meet the requirements of such contract in addition to all other outstanding obligations, that the intention was to allow the board of estimate to exercise the right previously exercised by the Legislature and put a limit on all rapid transit expenditures irrespective of the contract or the route for which the money was intended. My conclusion is therefore, that the discretion of the rapid transit board as to the character of their requisitions has remained undisturbed and the commission may now make requisition for all or any part of the money necessary. It therefore seems to me, unless there are some practical objections to such a course to which my attention has not been called, that when the time comes for submitting the Fourth avenue contracts to the board of estimate the Commission can ask that board to set a limit to rapid transit expenditures, and under section 45 ask for such part of the total amount called for by the contract as may be presently necessary. If less than the full amount is requisitioned section 45 clearly provides that the comptroller's certificate is not necessary.

Respectfully yours,

(Signed)

GEO. S. COLEMAN,  
Counsel to the Commission.

### Department of Water Supply, Gas and Electricity.—Repairs in water mains — Bills.

The Secretary presented the following opinion dated August 3, 1908, from the Counsel to the Commission, on the certain claims presented by the Department of Water Supply, Gas and Electricity for expenses in connection with the repairing of water mains, a copy of which was ordered sent to the Department of Water Supply, Gas and Electricity:

## OPINION OF COUNSEL.

August 3, 1908.

*Public Service Commission for the First District:*

Sirs:—I am in receipt of the communication of the Secretary dated March 25th, transmitting certain bills from the Department of Water Supply, Gas and Electricity for expenses alleged to have been incurred by it in repairing water mains, which expenditures are claimed to have been rendered necessary by "defective work on the part of the contractors for the Rapid Transit Commission." In reply to the request for my opinion on the claims presented, I desire to advise you as follows:

The first bill is for the sum of \$245.27, claimed to have been expended in repairing a 20-inch main at the southeast corner of Lenox avenue and One Hundred and Twenty-fifth street. This bill was forwarded by the Department of Water Supply to the Rapid Transit Board under date of September 13, 1905, and was then rejected for the reason that the injuries to the main which were complained of had not resulted from the work of subway construction, but from building operations which were being carried on at that point. It appears that in the summer of 1904, the owners of the property at the southeast corner of Lenox avenue and One Hundred and Twenty-fifth street began excavating for a building. On August 2d Chief Engineer Deyo of the Rapid Transit Subway Construction Company wrote to Mr. Hill, Chief Engineer of the Water Department, informing him that as the work of excavation was going to be carried considerably below the level of the main as it was replaced and readjusted under the plans of the Water Department, there was danger of a leak unless particular caution was taken, and suggesting that Mr. Hill look into the matter. Apparently no heed was given to this warning. Later, under date of March 29, 1905, Mr. De Varona, Acting Chief Engineer of the Department of Water Supply, wrote to the Rapid Transit Board complaining that the main was sunken and leaking and in a dangerous condition. This letter was referred to Acting Chief Engineer Rice, who reported under date of April 5, 1905, as follows:

"Last summer the owners of the property at the southeast corner of One Hundred and Twenty-fifth street and Lenox avenue began excavating for a building and this excavation was put down to a considerable depth below the elevation of the main, and a wall (for vault space under sidewalk) was placed within 4 or 5 inches of the sheeting for the water main trench. A portion of this wall fell down, probably owing to the pressure of the main and backfill in the pipe trench, as the builders had excavated to the sheeting. \* \* \* In my opinion, therefore, the trouble with the water main is due to the building operations on the adjoining property and under the sidewalk, and not to the subcontractor who laid the main."

In September, 1905, the bill of the Department of Water Supply was submitted to the Rapid Transit Board, and on September 16th, Chief Engineer Rice again reported on the matter to the same effect as above, stating that the work was not chargeable to subway construction. A copy of this report, it appears, was sent to the Department of Water Supply. No further attention was paid to the matter by that department, however, until February of this year, when the bill was again submitted, without any attempt to contravert the statements of the Chief Engineer.

The second bill of the Department of Water Supply is for the sum of \$64.98 claimed to have been expended in repairing a leak in a 1-inch pipe over the subway at the southwest corner of Lenox avenue and One Hundred and Twenty-fifth street.

It appears that, during the construction of the rapid transit railroad at this point, four 24-inch water mains were laid across Lenox avenue at One Hundred and Twenty-fifth street, in place of the original 48-inch main. The work of changing the water mains was completed in the spring of 1904. Final corrections of the new 24-inch mains with the old 48-inch main were made on April 2 and 3, 1904, and the water was turned on in the mains about 11:30 P. M. of April 3d. Eleven months later, on March 8, 1905, a leak was observed which was traced to a 1-inch pipe which had been put in by the contractor for use in connection with the 24-inch mains at the request of the Department of Water Supply. The report of the Acting Chief Engineer, under date of March 17, 1905, states: "When the 48-inch water main was replaced by four 24-inch water mains, the Water Department insisted that each one of these mains should have attached an air cock, and they were so provided. A 1-inch pipe led from these air cocks to a central valve and gate, at which point a manhole head was placed in the street so as to afford access to the same. This work was done in a satisfactory manner." On June 30, 1905, the Chief Engineer reported: "The trouble, as stated in the bill, was caused by the 1-inch pipe freezing and splitting, and which is apt to occur again unless the manhole is filled with manure, or some other protective to the pipe, during the winter months," and concluded that the Rapid Transit contractor was not responsible for the repairs to the pipe, the leak having been caused by the failure of the Department of Water Supply to adopt suitable precautions in caring for the pipe, after it had been installed in a satisfactory manner, and not by the negligence or fault of the contractor in installing it.

The third bill is for the sum of \$643.97 which, it is alleged, was expended in repairing a break in the 48-inch water main on the west side of Park avenue, between Forty-eighth and Forty-second streets, which occurred on June 11, 1905. This bill was submitted to the Board of Rapid Transit Railroad Commissioners in September,

1905, and rejected by them upon the ground that there was no evidence to indicate that the contractor had not fully complied with all the provisions of his contract. The facts of the case are set forth in the report of Mr. Rice, Chief Engineer of the Board, to Mr. Starin, the vice-president, under date of June 15, 1905 (Minutes of Rapid Transit Board, pp. 3527 to 3529).

It appears that the main in question was an old main which was not removed during the course of construction, but was supported in place; that the work of the Rapid Transit contractor on this water main was done under the constant supervision of competent engineers and inspectors; that the main was thoroughly inspected by the representatives both of the Board and of the Water Department; that "while the cause of the accident cannot be definitely ascertained the pipe, being old, probably yielded at some point." In view of these facts, the board was advised by its counsel that "it would be impossible to compel the contractor to make good the damages caused by the accident" (Minutes of Rapid Transit Board, p. 3689), and later, when the matter was again submitted to counsel, this opinion was reaffirmed by him. (Minutes of Rapid Transit Board, p. 3694.) The Board finally notified the Department of Water Supply that it had no evidence on which it could hold the contractor to responsibility for the break (Minutes of Rapid Transit Board, p. 3726).

It seems to me that this question, so far as its legal aspect is concerned, narrows down to a comparatively narrow scope. Contract No. One provides that (p. 19):

"The work is to be done and the materials are to be furnished subject to the direction and approval of the engineer. The contractor shall promptly obey and follow every direction within the general purview of the work which shall be given by the engineer, including any direction which he shall give by way of withdrawal, modification or reversal of any previous direction given by him."

The Chief Engineer has examined this matter and has reported that the contractor is not to blame and it seems to me that under the contract his decision is final. A similar question was the subject of an opinion by the Counsel to the Rapid Transit Board, printed at p. 2430 of Vol. 4 of the Minutes. In the opinion it is stated in part:

"At its meeting on the 10th instant, the Board referred to us the matter of the claim of the Department of Water Supply that the leak in the water main at the southeast corner of Elm and Houston streets was due to Rapid Transit work, and that, therefore, the contractor ought to be required by the Board, at his own expense, to make good the defect. We have examined the opinion in this matter rendered by the Corporation Counsel to the Commissioner of Water Supply on the 5th of October last and the letters of the Commissioner of Water Supply and his Chief Engineer to our Chief Engineer, the report of the Engineer of the First Division to our Chief Engineer, and the communication of the Chief Engineer of the Subway Construction Company to our Chief Engineer. So far as the law of this matter is concerned, we agree in substance with the Corporation Counsel that, where fire hydrants and other water connections were disturbed by Rapid Transit work, the Rapid Transit contractor was bound, under the terms of the contract, to make good the injury done by Rapid Transit work, but that the contractor's obligation does not include the duty of repair or to make good defects happening since their restoration by the contractor and due to some cause other than the manner in which the work of restoration was done by him.

"There remains of this case, therefore, simply the question of fact whether or not the leak is due to the imperfect manner in which the contractor did the work, or is due to things happening since he did the work, and not caused by Rapid Transit construction. Upon this question of fact there is a dispute between the Office of the Commissioner of Water Supply and the contractor. It seems to us that so far as the Board is concerned, the decision of our own Chief Engineer on this disputed question must be final."

I think this reasoning is controlling in this case. The entire charge of this work was lodged with the Rapid Transit Board and the contract provided that work was to be done in accordance with the direction and to the satisfaction of the Chief Engineer. The contractor has complied with these requirements and it seems to me he has done all that is required to do by his contract. I do not see that the question whether the work has been accepted by the City Departments is material, because if the work was unsatisfactorily done the Chief Engineer could order it to be done over again. As it is, the Chief Engineer has reported that the work was satisfactorily done. Aside from all other questions it seems to me that it is now rather late, after the work has been completed several years, to attempt to impose additional liability on the contractor.

Although these bills are made out against the Rapid Transit Board I do not see how it is possible that any recovery should be had against the Board or the members or against this Commission or its members, as successors. The Commission has no fund for the purpose of paying these claims and even if it had it would be taking the money out of one account in the city treasury and depositing it under another. I do not think any question of personal liability on the part of members of the late Rapid Transit Board or of the Commissioners can be

seriously considered. It is, of course, a well-settled rule that public officers to whom a large discretion is entrusted are not responsible for their acts within the limits of their authority.

Respectfully yours,  
 (Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

### Hudson and Manhattan Railroad Company.— Payments on account of franchise.

The secretary presented the following communication from N. Taylor Phillips, deputy comptroller:

DEPARTMENT OF FINANCE, CITY OF NEW YORK.

February 20, 1908.

*The Public Service Commission, First Division, Tribune Building, New York City:*

GENTLEMEN:—In view of the fact that the Hudson and Manhattan Railroad Company is soon to begin the operation of its tunnel under the North river, and the Subway Railway in this borough, it is important that this Department be advised as to the railroad's financial obligations to the city. In view of this fact I respectfully ask that you advise me as early as possible of your determination on the following propositions:

Under the terms of the several certificates all payments to the city are to be made on an annual basis and are due at the quarters beginning January, April, July and October, which, as I understand it, would mean that the first payment will be due on April 1st this year.

The first item in this schedule is the \$100 for the under the river privilege.

The payment of fifty cents per annum per linear foot of single track and also station platform space is specified. Will you kindly advise me as to the number of linear feet, including the Nineteenth street station.

How is the original payment for vault space modified by the subsequent agreements for the payment of \$1,000 for each exit? In this connection I beg to call your attention to the fact that, whereas the several maps that have been issued by the railroad company show a station at Eighteenth street, no mention is made of said station in any of the certificates. It is a matter of fact that a station at Nineteenth street will be opened with the official operation of the road on February 25th. Upon what basis will payment be made for the use of this station?

Does the requirement of the payment of \$9,000 mentioned in the original certificate, and again in the certificate of extensions for street rights, mean the single payment covering the entire route, or payments for each of the original lines and the extensions from Sixth avenue and Ninth street and across through Ninth street to Fourth avenue?

Is the requirement for the payment of \$3,224 per annum for the use of the underground portions of Greenwich, Christopher and West Tenth streets eliminated by the contract for the Sixth avenue and Ninth street extensions.

What provision, if any, has been made for payment for privileges at the Christopher street, the Ninth street, the Thirty-third street and the Fourth avenue terminals and stations?

I beg also to call your attention to the provisions in these franchises that call for the filing with your Commission of a sworn statement as to the cost of construction of the extensions of the original certificate. Also that the regulation of local traffic is a question that is to be determined by your board.

Yours very truly,  
 (Signed) N. TAYLOR PHILLIPS,  
*Deputy Comptroller.*

The secretary stated that this communication had been referred to the counsel to the Commission for an opinion thereon and that the counsel on June 30, 1908, had transmitted the following communication in reply thereto:

OPINION OF COUNSEL.

June 30, 1908.

*Public Service Commission for the First District:*

SIRS:—Referring to my letter to you bearing date March 28, as to rental payable by the Hudson & Manhattan Railroad Company for what is known as the McAdoo Tunnel and privileges at Morton street, Christopher street, Sixth avenue and Ninth street, in the borough of Manhattan, I have now received from the engineers to the Commission the measurements referred to in that opinion as a basis for calculation of the sums to be paid for the items of rental therein mentioned.

I accordingly repeat here the different items upon which the rental is to be calculated, and state besides the measurements and the annual amounts which are in my opinion payable under each of the same as of two separate dates, namely, February 25, 1908, the date when the railroad was first put in operation, and as of June 15, 1908, the date when operation on Twenty-third street was begun, viz.: .

		Feb. 25	June 15
(1)	Outside the pier headline in the Hudson River, \$100.00 per annum for twenty-five years beginning February 25th, 1908.....	\$100.00	<b>\$100.00</b>
2)	From the pier headline under the docks and bulkheads belonging to the City and under streets to terminate at 33rd Street and Sixth Avenue and Fourth Avenue and 9th Street, 50c. per annum per linear foot of single track railway under streets, and 50c. per annum per linear foot of subway station platform under streets for ten years beginning February 25th, 1908, and for the next fifteen years \$1.00 per annum per linear foot of such single track railway and \$1.00 per annum per linear foot of subway station platform.		
	Feet of Single Track Railway.....	15861.	16633.
	Feet of Single Track Railway, Crossovers.....	210.62	210.62
	Feet of Platforms.....	2852.26	3207.97
		2)18923.88	<b>20051.59</b>
		\$9,461.94	<b>\$10,025.80</b>
(3)	Under certificate of July 10, 1902, to the terminal at Christopher and Greenwich Streets, \$9,000.00 per annum for ten years beginning February 25th, 1908, and for the next fifteen years \$15,000.00 per annum.....	9,000.00	<b>9,000.00</b>
(4)	For rights under certificate of February 2, 1905, from Greenwich Street to Sixth Avenue and 33rd Street, and by 9th Street to Fourth Avenue, \$9,000.00 per annum for ten years beginning February 25, 1908, and for fifteen years thereafter a sum equal to 5% of the estimated gross earnings of such extensions to be agreed upon or arbitrated, and in the meantime \$9,000.00 annually.....	9,000.00	<b>9,000.00</b>
(5)	For the right to construct and maintain exits in the streets and station approaches connected therewith, including so much of station approaches as may be in Sixth Avenue, at 14th Street, West Side, 23rd Street, West Side, and 28th Street, East Side, and West Side, \$4,000.00 per annum for a period of twenty-five years beginning February 25, 1908.....	4,000.00	<b>4,000.00</b>
(6)	Under the certificate of February 2, 1905, at page 11, a vault is anything in the street which is part of a station or of station approaches, and is above a horizontal plane ten feet below the surface. For vault space the grantee is to pay, provided it is not paid for under other clauses of the contracts, as for instance, station platforms and exits, 4% per annum on the valuation of the horizontal area occupied, based on the valuation for taxation (1904) of neighboring or adjacent lands, exclusive of buildings, per square foot. One-quarter of such assessed valuation is to be deemed the value per square foot of the vault for ten years beginning February 25, 1908, and one-half of such assessed valuation is to be deemed the value per square foot for the period of fifteen years thereafter.....		
	The following vaults are reported by the Engineers under the foregoing item:		
	<i>Station 14th St. and 6th Ave., East Side:</i>		
	Space occupied.....	242 sq. ft.	
	Assessed value of land ex. buildings, 1904.....	\$1,225,000	
	Area in square feet.....	28,393 <sup>4</sup>	
	Valuation per square foot.....	\$43.143	
	; thereof.....	\$10,786	
	Valuation of 242 sq. ft.....	\$2,610,212	
	4% thereof.....	104.41	<b>104.41</b>
	<i>Station 19th St. and 6th Ave., East Side:</i>		
	Space occupied.....	317 sq. ft.	
	Assessed value of land ex. buildings, 1904.....	\$2,600,000	
	Area in square feet.....	84,640	
	Valuation per square foot.....	\$30,718	
	; thereof.....	\$7,6795	
	Valuation of 317 sq. ft.....	\$2,434.40	
	4% thereof.....	97.38	<b>97.38</b>
	<i>Station 19th St. and 6th Ave., West Side:</i>		
	Space occupied.....	321 sq. ft.	
	Assessed value of land ex. buildings, 1904.....	\$1,700,000	
	Area in square feet.....	46,674 <sup>3</sup>	
	Valuation per square foot.....	\$36,422	
	; thereof.....	\$9,105	
	Valuation of 321 sq. ft.....	\$2,922,705	
	4% thereof.....	116.91	<b>116.91</b>

ORDERS OF THE COMMISSION ISSUED IN 1908. 329

Feb. 25 June 15

*Station Christopher St. between Hudson and Christopher Streets:* \*

In this vault are involved several parcels of property as follows:

*Lot No. 51, Block 630.*

Space occupied.....	251 sq. ft.	
Assessed value 1904.....	\$15,000	
Area in sq. ft. ....	2,285	
Valuation per sq. ft. ....	\$6.5045	
† thereof.....	\$1,6411	
Valuation of 251 sq. ft. ....	\$411.916	
4% thereof.....		\$16.48

*Lot No. 52, Block 630.*

Space occupied.....	456 sq. ft.	
Assessed value 1904.....	\$9,500	
Area in sq. ft. ....	1,346	
Valuation per sq. ft. ....	\$7.0578	
† thereof.....	\$1,7694	
Valuation of 456 sq. ft. ....	\$304.506	
4% thereof.....		32.18

*Lot No. 31, Block 630.*

Space occupied.....	45 sq. ft.	
Assessed value 1904.....	\$7,000	
Area in sq. ft. ....	1,468	
Valuation per sq. ft. ....	\$4.7683	
† thereof.....	\$1,1920	
Valuation of 45 sq. ft. ....	\$53.64	
4% thereof.....		2.15

*Lot No. 30, Block 630.*

Space occupied.....	137 sq. ft.	
Assessed value 1904.....	\$21,000	
Area in sq. ft. ....	1,862	
Valuation per sq. ft. ....	\$11.2781	
† thereof.....	\$2,8195	
Valuation of 137 sq. ft. ....	\$386.171	
4% thereof.....		15.45

*Lot No. 20, Block 605.*

Space occupied.....	220 sq. ft.	
Assessed value, 1904.....	\$6,000	
Area in sq. ft. ....	950	
Valuation per sq. ft. ....	\$6.3157	
† thereof.....	\$1,5789	
Valuation of 220 sq. ft. ....	\$347.358	
4% thereof.....		13.80

*Lot No. 21, Block 605.*

Space occupied.....	15 sq. ft.	
Assessed value, 1904.....	\$6,000	
Area in sq. ft. ....	950	
Valuation per sq. ft. ....	\$6.3157	
† thereof.....	\$1,5789	
Valuation of 15 sq. ft. ....	\$23.683	
4% thereof.....		.95

Total..... \$81.10 \$81.10

\$81.10 \$81.10

*Station 6th Ave. and 23rd St., East Side:*

Space occupied.....	364 sq. ft.	
Assessed value, 1904.....	\$2,015,000	
Area in sq. ft. ....	16,906	
Valuation per sq. ft. ....	\$119.188	
† thereof.....	\$29,797	
Valuation of 364 sq. ft. ....	\$10,846.108	
4% thereof.....		433.84

Total..... \$399.80 \$832.64

\$31,961.74 \$32,959.44

Grand Total.....

\$31,961.74 \$32,959.44

This annual rental, by the terms of the certificate, is payable quarterly at the end of each quarter on April 1st, July 1st, October 1st and January 1st.

The quarterly payment for April 1st, being a period of ninety-one days, upon the basis of February 25th, above stated, would be the sum of..... \$7,990.44

And for the period of thirty-five days, from February 25th to March 31st inclusive, would be the sum of..... 3,073.25

The quarterly payment to July 1, 1908, will be made up of seventy-six days under the rental of February 25th, which amounts to..... 6,673.33

And of fifteen days under the rental of June 15th, which amounts to..... 1,358.22

Making a total for the quarter ending July 1..... \$8,031.55

Respectfully yours,  
(Signed) GEO. S. COLEMAN,  
Counsel to the Commission

**Contracts Nos. 1 and 2 — Pneumatic mail tubes in subway.**

The secretary presented a communication, dated October 3, 1908, from the chief engineer in regard to the placing of mail tubes in subways stating that it would not be very practicable to install them in the subways constructed under contracts 1 and 2, except in the East river tunnel, but that they could more easily be introduced into the Brooklyn loop lines on account of greater clearances, although such location would not be advantageous for their maintenance; also the following opinion from the counsel to the Commission in the same matter. The secretary was instructed to communicate with Joseph Stewart, chairman of the sub-committee of the Pneumatic Tube Commission, in accordance with the last paragraph thereof:

**OPINION OF COUNSEL.**

October 12, 1908.

*Public Service Commission for the First District:*

Sirs.—I have the Secretary's letter of September 30th embodying a letter dated September 28th from Joseph Stewart, Chairman of the Sub-Committee of the Pneumatic Tube Commission, and I am also in receipt of the Secretary's letter of October 7th transmitting a copy of Chief Engineer's report dated October 3d upon the subject matter of Mr. Stewart's letter.

Mr. Stewart states in part in his letter:

"The question has arisen as to the probability of installing pneumatic tubes for mail purposes in existing or proposed subways in New York and Brooklyn, and we desire to be informed what the probable attitude of the Public Service Commission would be toward such installation and operation and, if such installation were regarded as practicable and desirable under what conditions such installation would be allowed by the Public Service Commission and how the permission to install such tubes would be obtained."

So far as the legal aspect of this question is concerned, I desire to advise you that any authority for the installation of pneumatic mail tubes must depend upon the provisions of the Rapid Transit Act. Section 6 of the Rapid Transit Act provides in part as follows:

"When the consents of the local authorities and the property owners, or, in lieu thereof, the authorization of the said Appellate Division of the Supreme Court upon the report of commissioners, shall have been obtained, the board of rapid transit railroad commissioners shall at once proceed to prepare detailed plans and specifications for the construction of such rapid transit railway or railways in accordance with the general plan of construction, including all devices and appurtenances deemed by it necessary to secure the greatest efficiency, public convenience and safety, including the number, location and description of stations and plans and specifications for the suitable supports, turnouts, switches, sidings, connections, landing places, buildings, platforms, stairways, elevators, telegraph and signal devices, and other suitable appliances incidental and requisite to what the board may approve as the best and most efficient system of rapid transit in view of the public needs and requirements. \* \* \*

It seems to me that under this provision the only appliances authorized to be constructed as part of the railroad are those which are "incidental and requisite" to the operation of the railroad, and from such information as I have it does not seem to me that pneumatic mail tubes would fall within this class. It is to be remembered also that the interest and sinking fund charges provided for in the act are to be charged upon the cost of the railroad, and in view of that provision I do not think it proper that upon the cost of the railroad should be imposed the cost of the construction of other appliances which, although undoubtedly of great public use, are not in themselves necessary for its operation.

The Rapid Transit Act also, however, provides for the construction of pipe galleries, the cost of which, under Section 34a, is to be deducted from the amount of bonds upon which the interest and sinking fund charges are to be paid. In regard to these galleries, section 6 in part provides that:

"the said board may, in its discretion, include in its said plans provisions for galleries, ways, subways or tunnels for sewers, gas or water pipes, electric wires and other subsurface structures and conductors proper to be placed underground, whenever necessary so to do, in order to permit of the proper construction of any railway herein provided for in accordance with the plans and specifications of the said board, or for any other purpose in furtherance of the public interest or convenience."

It is further provided in section 6 that these galleries shall be maintained by the city but should be in the care and charge of the Rapid Transit Board and subject to such regulations as it should prescribe.

The Chief Engineer in his report evidently considers it practicable to install the pneumatic mail tubes in the pipe galleries, and it seems to me that that course is proper. The pipe galleries are provided for the purpose of having placed therein all subsurface structures, except possibly those such as sewers which would be too

large to be placed therein, and it seems to me that the placing of pneumatic tubes in those galleries would be only following out the plain intent of the act.

In regard to installing pneumatic mail tubes in the subways at present constructed, I have noted that the Chief Engineer, in his report, evidently considers such a course impracticable, but the same legal situation to which I have referred as applied generally to subways seems to me also to apply to the ones now in operation, although further complicated by the fact that the Interborough Company is now in possession of those roads, under its contract with the city. It would therefore be necessary, as a first step, to have the consent of the Interborough Company to the installation of these tubes, but even if such consent were given and such a course met with your approval, it would seem to me that additional legislation would be necessary before it would be proper to install nonrailroad structures in the subway. If such authority should be granted and the Interborough Company consented to placing these tubes in the subway, it would then be necessary for the company operating the mail tubes to obtain from the local authorities a proper franchise.

Mr. Stewart further asks how permission to install such tubes would be obtained. As placing the tubes in the pipe galleries seems to be the only course for which there is now authority, I think it proper that Mr. Stewart be advised that as a first step a franchise to maintain such tubes in the streets must be obtained from the Board of Estimate in accordance with the provisions of the Greater New York Charter, and when that franchise has been obtained application might properly be made to you for permission to place the tubes in any galleries which may have been constructed and subject to such charges and regulations as you may prescribe.

Respectfully yours,  
(Signed) GEO. S. COLEMAN,  
Counsel to the Commission.

\* [Sewers as soon as completed should be turned over to municipal authorities for maintenance.]

## OPINION OF COUNSEL.

June 27, 1908.

## Public Service Commission for the First District:

SIRS:—I have the Secretary's letter of June 8th, transmitting copy of a letter from the Acting Chief Engineer, dated the same day, recommending that certain sewers along the line of the Brooklyn Loop Subway that have been completed by the contractors be turned over to the municipal authorities for maintenance. If the Commission may properly take the action suggested I am asked to prepare a suitable communication or resolution.

The contracts for the construction of the Brooklyn Loop Lines contain the uniform provision, which, in the Degnon contract, is found on p. 113, that:

"During the progress of the work, and until the entire completion and final acceptance thereof, the sewers, drains, basins, culverts and connections shall be kept thoroughly clean throughout, and left clean, and the drainage of any old sewer that may be taken up or intercepted shall be provided for and taken care of by the contractor."

There is the further provision, uniform in all these contracts, that all risk of loss or damage to the works during construction shall be borne by the contractor and that the contractor shall make good any such loss or damage.

It would seem, therefore, that the contractor is under obligations to take care of these sewers, and it is largely a question of policy whether the Commission deems it proper to release him from part of the work required under the contract. It should, of course, be stipulated that the turning over of these sewers to the municipal authorities does not release the contractor from the obligation to repair any defects in construction.

There are certain advantages in turning these sewers over to the municipal authorities as soon as completed. Considerable confusion has been caused in the past by reason of the fact that certain municipal officers have disclaimed responsibility for accidents to sewers rebuilt under Rapid Transit auspices, on the ground that the sewers, as reconstructed, have never been accepted by the city and are, therefore, still under the jurisdiction of the Rapid Transit Board, or the Commission, as its successor. The acceptance of this work by the city would also definitely place a date when the sewer was completed and would do a great deal to prevent the filing of claims four or five years afterward, for defects in sewers which were caused by wear and tear and not by any defect in construction. I have before me at the present time a number of claims made by the Department of Water Supply, Gas and Electricity, for repairs to water mains which it is claimed by them were rendered necessary by defective work on the part of the rapid transit contractor. The Chief Engineer for the Commission, on the other hand, reports that those water mains were properly constructed as a part of the work of constructing the Manhattan-Bronx Rapid Transit Railroad and that the repairs necessary were not due to defective work, but in most cases to wear and tear which have caused the same or more damage if the mains had not been affected at all by rapid transit work. If these sewers are now accepted by the

\* See footnote, page 9.

Borough President and maintained under his direction it is to be expected that any defects in construction will be promptly discovered and called to the attention of the Commission.

If the Commission desires that the action recommended by the Acting Chief Engineer be taken, I would advise the transmittal of letters substantially in the form enclosed to the Borough President and to the contractors.

Respectfully yours,

(Signed)

GEO. S. COLEMAN,  
Counsel to the Commission.

### BROOKLYN LOOP LINES.

\* [Subway should be constructed out Broadway, Brooklyn, from the Williamsburg Bridge to the crossing at Broadway and Lafayette avenue, as without it the Center street subway is almost useless.]

#### OPINION OF COMMISSION.

(Adopted May 26, 1908.)

##### COMMISSIONERS BASSETT AND MCCARROLL:

The Manhattan portion of the Brooklyn loop lines now in course of construction will be completed in about one year. No contract has been made for equipment and operation. The Board of Rapid Transit Railroad Commissioners let the contracts for the construction, but instead of proceeding with the construction of the Brooklyn portion gave their attention to the Fourth avenue subway in the borough of Brooklyn. Probably our predecessors considered that the Brooklyn Union Elevated Railroad Company would equip and operate the Manhattan portion of the Brooklyn loop lines and that the completion of the Brooklyn portion could be deferred for some time. This is shown by the fact that on February 7th, 1907, one week after the Rapid Transit Board by resolution approved the construction of the Centre street subway, the following resolution was passed:

*"Resolved*, That the charter of the rolling stock which will be allowed in the portion of Subway Route No. 9, connecting the Manhattan terminals of the Williamsburg and Brooklyn Bridges, shall be at least as good as the most modern now operated on the elevated railway tracks of the Brooklyn Rapid Transit Company."

Your committee has had a number of conferences with the president and other officers of this company and has now been informed by them that the company is unwilling to consider equipping or operating the Manhattan portion of the Brooklyn loop lines under the existing requirements of the law. It is but fair to say that the company has not at any time so far as your committee can learn assented to the operation of this subway by it. The reasons of its officers for taking this position are that the operation of their cars across the bridges is carried on at a loss and that operation of trains by it in the Manhattan subway would bring no appreciable increase in income but would on the contrary result in such a loss as to impair the ability of the company to perform its obligations to the public within the borough of Brooklyn. Your committee considers that it is now definitely settled that the Brooklyn Rapid Transit Company will not be willing to secure rights in the subway so that it can operate its Broadway-Brooklyn trains over the Williamsburg Bridge and through the Delancey and Centre street subway to the City hall.

The authorities are therefore confronted with two serious questions: first, how shall such subway be utilized to divert part of the Brooklyn Bridge traffic to the Williamsburg Bridge and, secondly, how shall the Centre street railway be utilized in the meantime.

In the opinion of your committee the full use of the Williamsburg Bridge can be obtained in connection with the subway now in course of construction in Manhattan by building all or part of the Brooklyn portion of the loop lines. If the resources of the city would permit, it would be very desirable to complete the Broadway-Lafayette avenue subway loop at once, or to extend the Broadway subway to East New York, but inasmuch as funds for municipal con-

\* See footnote, page 9.

struction appear to be limited and the greatest possible usefulness and earning capacity of every mile of subway constructed must be considered, your committee has come to the conclusion that construction should first extend out Broadway-Brooklyn, from the Williamsburg Bridge to the corner of Broadway and Lafayette avenue. This route has already been laid out and consents have been duly obtained. It would serve the most populous part of Brooklyn and divert to the Williamsburg Bridge and away from the Brooklyn Bridge a large part of the population that is now using the Lexington avenue and Ridgewood elevated lines and causing great congestion on part of the Brooklyn Bridge surface lines. Such an important relief to the Brooklyn Bridge would allow more elevated and surface cars to operate across Brooklyn Bridge to every other part of Brooklyn and would tend to relieve the present overcrowding of through trains on every Brooklyn elevated line.

The proposed portion of the Brooklyn loop lines is laid out for four tracks and from the Williamsburg Bridge Plaza to Lafayette avenue measures 11,000 feet. Its estimated cost including terminal construction at the Williamsburg Bridge is \$10,000,000. No real estate with the possible exception of stations or station entrances needs to be taken. The fact that it is now definitely settled that the Brooklyn Rapid Transit Company will not be willing to operate its Broadway-Brooklyn trains in the Centre street subway brings this subject into a much more important place than it held during the last months of the existence of the Rapid Transit Board. No small stretch of subway in Brooklyn will divert so many passengers from the Brooklyn Bridge. Without it the Centre street subway is almost useless. At some later time the Lafayette avenue portion of the loop lines can be built, or construction extended further out Broadway.

### Manhattan Section — Brooklyn Loop Lines.

\* [The Brooklyn Bridge station of the Loop Lines, Manhattan section, should be constructed upon a lower level than originally planned.]

#### OPINION OF COMMISSION.

(Adopted September 29, 1908.)

COMMISSIONERS MALTHIE, McCARROLL and BASSETT:—

The recommendations of the Chief Engineer, which have been referred to this Committee, provide for the construction of the Brooklyn Bridge station upon a level somewhat lower than had originally been planned. This change will make it possible to construct a mezzanine floor throughout the entire station, which will facilitate very considerably the movement of passengers. It will make possible the elimination of escalators and subpassageways, which is very desirable. It will necessitate, however, the construction of a special sewer. The additional expense of these changes is estimated by the Chief Engineer to be approximately forty-five thousand dollars, but the changes are so advantageous that, in the opinion of your committee, they are extremely desirable, and their approval is recommended.

It should be stated that the lowering of the level of the station will not interfere with a possible connection in the future with the Brooklyn Bridge. It will also be possible to extend all of the tracks in a double-level subway down Nassau street, or to extend two down Nassau street and two down William street. This feature of the situation is considered very important for the extension of the loop lines at some future time is very probable.

Your committee recommends, therefore, that the base of rail in the Brooklyn Bridge Station be lowered as indicated in the plans transmitted herewith.

Thereupon the following resolution was adopted:

*Resolved*, That the report of the Committee on the Manhattan Loop Lines, upon the recommendations of the Chief Engineer be approved.

Dated September 29, 1908.

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\* See footnote, page 9.

### Fourth Avenue Subway.

\* [The Fourth avenue subway contracts and drawings should be so modified as to reduce the grades and increase the head-room.]

The chairman, with the approval of the committee on the whole, sent in the following communication to the Board of Estimate and Apportionment:

January 8, 1906.

*To the Board of Estimate and Apportionment of the City of New York:*

GENTLEMEN:—During the preparation of the contracts and the contract drawings for the Fourth avenue subway in Brooklyn, the Public Service Commission has considered it advisable to make certain modifications, so as to reduce the grades and to increase the headroom. The object of these changes, which have been recommended by Chief Engineer Seaman, is to promote the more rapid, safe and economical operation of trains and to make it possible for cars now being used in the local suburban traffic of steam railroads to be operated through the subway. By so doing this would also facilitate the making of more advantageous contracts by the City for the subsequent rental and operation of the road. In the opinion of the Commission it would be a great mistake to build any future subway of such dimensions that an existing railroad might be debarred from being a competitive bidder or through which it would be impossible to run railroad cars, no matter how desirable and necessary it might prove to generations hence.

The trains run through the Fourth avenue subway will continue over the Manhattan Bridge and be run through the subway loop now under construction in Canal and Centre streets. If the Fourth avenue subway is enlarged, it would be advisable to enlarge the subway loop, otherwise the larger cars used by steam roads could only run as far as the Manhattan terminal of the Manhattan Bridge; the subway loop only allowing for a headroom of thirteen feet six inches above top of rail, whereas fourteen feet six inches are necessary for the cars used in suburban traffic.

The subway loop, connecting, as it does, the Williamsburg Bridge with the other two bridges, is so planned that the cars from any future subway extending into Brooklyn or Queens from the Brooklyn terminus of the Williamsburg Bridge, can be run through the subway loop. If the present headroom of thirteen feet six inches is not enlarged, it will not be possible to allow for any railroad connection with such future subways, and will make it impossible for any of the present railroads in Queens to reach Manhattan via the Williamsburg Bridge and subway loop.

The plans for the loop also provided for a double deck subway in part and for the use of grades frequently as high as 4 per cent, and in some instances as high as 5½ per cent. The steepness of these grades and the frequency with which they follow one another in the loop, will not only greatly increase the cost of operation but limit materially the number of trains that can be run through the subway in a given period and increase the possibility of accidents.

Our Chief Engineer, Mr. Seaman, after careful study of the problem, had found that it is possible to modify the plans for the subway loop so as to increase the height of the tunnel, to modify the grades, to decrease their number, and to do away with the double deck stations and tracks. To make these changes it will be necessary to change two of the stations, and in order to make proper connection with the crosstown line in Canal street, it is proposed to unite the two stations at Leonard-Franklin street and at Howard-Grand street, into one station at Canal street. It is also proposed to operate the loop as two double-track railroads, instead of one four-track road, but with crossovers to be used in case of accident, or when needed for the shunting of trains. Eventually this might lead to the connection of the Williamsburg Bridge with the Brooklyn Bridge, which would naturally serve the purposes of the elevated roads in Brooklyn which connect with these two bridges. The other set of tracks would be operated in connection with the Manhattan Bridge, through the proposed terminal at Chambers street, and thence down William or Nassau, crossing the East river by a tunnel, and connecting with some future subway in Brooklyn. This loop would naturally serve the Fourth ave-

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\* See footnote, page 9.

new subway, and could be operated there in conjunction with or entirely independent of the loop previously described.

This modification simplifies a very complicated plan; eliminates two double-deck stations, making all tracks on a level; would work in conjunction with a proposed future line across Canal street to the North river, and thereby connect with all northbound and southbound routes which would intercept it, with the Fourth avenue subway and the Manhattan Bridge, and would increase very materially the safety of operation. It is estimated that the operating capacity would be increased fully 25 per cent, in addition to the proposed tunnel connections, and also that the time of construction would be materially decreased.

Cost of the work as revised would be somewhat greater or somewhat less than the plans previously adopted, according to whether pipe galleries are or are not provided for.

Inasmuch as these changes involve the use of money already appropriated by your Board, we shall, as soon as they are completed, lay the revised plans and estimates before you, and in the meanwhile present for your consideration these facts as outlined.

Very truly yours,

(Signed) WM. R. WILLCOX,  
Chairman.

### **Fourth Avenue Subway.— Prohibiting the sinking of wells which will interfere with its construction.**

#### **EXTRACTS FROM MINUTES OF JANUARY 21, 1908:**

Commissioner McCarroll:—"We took up the matter yesterday with reference to wells on Fourth avenue. It was reported to us that wells were being sunk there under permission of the Borough President of Brooklyn, which would interfere more or less with the construction of the Fourth avenue subway. I move you, Mr. Chairman, that a letter be addressed by the Secretary to the Borough President stating that this fact has been reported to us and representing to him also that the sinking of wells will interfere with the construction of the subway, and should be prohibited."

The motion was duly seconded.

Commissioner Eustis:—"I think we ought to go further and ask him to revoke any permits that have already been granted."

Commissioner McCarroll:—"I think we had better communicate with him by letter, asking him how the matter stands."

Commissioner Bassett:—"In making an amendment to that motion I want to suggest that the Bureau of Water Supply, Gas and Electricity, which is directly under the city administration, has made this arrangement with the well contractor, directing him to put down these wells along the Park slope in Brooklyn, and that Mr. Coler's powers merely extend to permitting it to be done in a certain place, he not having the power to refuse to have it done in some place. In other words, he perhaps might have been compelled by mandamus proceedings if he had not given the permission to do it in some place. Fourth avenue is surely not the right place to do so, because the proposed subway or pipe galleries or stations which are not yet definitely decided upon would make it very inadvisable indeed if test wells or permanent wells should go down anywhere in that avenue. I therefore move the amendment that another letter of the same tenor be sent to the Bureau of Water Supply, Gas and Electricity."

Commissioner McCarroll:—"I do not see any objection. My idea was to draw out in more official manner than we had it in the information and facts so that we might take the proper steps afterwards."

The secretary was thereupon directed to send communications, as suggested above, to the Borough President and to the Bureau of Water Supply, Gas and Electricity.

### Fourth Avenue Subway.

In May, 1908, the Commission awarded contracts for the Fourth avenue subway subject to the approval of the Board of Estimate and sent formal communications to that board asking its approval. No action having been taken, the chairman was authorized by the Commission to send the following letter to the Board of Estimate and Apportionment on November 19, 1908:

**LETTER OF CHAIRMAN WILLCOX.**

*Board of Estimate and Apportionment, No. 277 Broadway, New York City:*

GENTLEMEN:—On the 18th day of June, 1905, the so-called Fourth avenue line was laid out by the Board of Rapid Transit Commissioners. This action was approved by your Board according to law on the 14th day of July, 1905. Thereafter your Board on the 4th day of June, 1907, approved of the preparation of contracts for construction only of such rapid transit line. Our predecessors, the Board of Rapid Transit Commissioners accordingly prepared contracts and fixed a day, as required by law, for a hearing on the forms of contracts. Before the day for such hearing arrived the Public Service Commission was created and succeeded to the duties of the Rapid Transit Board. This Commission found it advisable to make certain changes in the plans in order that gradients might be lessened and capacity increased, of all of which your Board approved. Bids for the first six sections of this subway, extending from the Manhattan Bridge to Fortieth street, Brooklyn, were opened on the 8th day of May, 1908, and this Commission immediately designated which of the bidders it approved. It thereupon became necessary for your Board to sanction the execution of all or part of these six contracts, but no action whatever has been taken upon any of them by your Board. More than six months have now elapsed since you were asked to authorize the execution of these contracts, but your Board has neither assented to their execution nor signified your disapproval.

It is plain that this Commission, which is the only body authorized by law to construct city owned rapid transit lines, is prevented from making any progress whatever in this important branch of city development. It is useless to press the construction of other rapid transit lines while the Fourth avenue line, of which you stood sponsor, to the same extent as our predecessors, the Board of Rapid Transit Commissioners, is held in abeyance.

It is expected that the Manhattan Bridge will be completed in about one year. If the proposed subway can be constructed the bridge can be put to immediate use for rapid transit purposes. The construction of these six sections would accomplish a deflection of a considerable amount of traffic from the Brooklyn Bridge. It is most desirable that construction should proceed at once in Flatbush avenue extension as no paving, pipe laying and introduction of usual improvements can well take place, without great loss, until the subway construction is completed. The city has opened this new street at great expense and it should be improved without delay. Applications have been received by your honorable Board from a number of street surface railroad companies to operate the Flatbush avenue extension and Manhattan Bridge, but no suitable roadway for these lines can be provided until the subway construction is done. This Commission after careful consideration has decided that it is not necessary or desirable to introduce elevated railroad construction in Flatbush avenue extension, so that now the need is more apparent for the speedy construction of the subway in this street and the prompt utilization of the street for surface cars and vehicular traffic.

A large number of bids were received for the construction of the first six sections and the figures offered by the lowest bidders were fairly reasonable. It is claimed that prices of labor and material will advance, and if this is the case it is probable that difficulty will be experienced in holding bidders to their present figures. Indeed, it is uncertain whether the delay already caused by the non execution of contracts will not make trouble in this respect.

From every point of view it is desirable that your Board should take some action on these contracts. This Commission has gone to the extent of its powers in progressing the work which your Board has repeatedly officially sanctioned. We

urgently request you to allow immediate progress to be made in this important work. This Commission is of the opinion that the work on this subway should be proceeded with at once and that further delay will be most unfortunate and harmful.

### Name of Station, Brooklyn.

#### OPINION OF COMMISSION.

(Adopted March 20, 1908.)

COMMISSIONER McCARROLL:—

Regarding Hoyt Street Station of the Brooklyn Subway.

Referring to the matter of the designation of the station at Hoyt street, of the Brooklyn Subway, which was referred to me as committee to consider the suggestion of Messrs. Frederick Loeser & Company, for a change in the name to Hoyt-Duffield, I have to report having carefully considered the matter and made some enquiries regarding same.

Duffield street has had for a long period a station on the elevated railroad and is well known to the traveling public as being the most convenient to reach the retail shopping district. Hoyt street on the other hand is not so marked and, while a well known street, has not the significance in the same respect that Duffield street has.

The station has an exit on both of these streets, so that it is entirely proper that either or both names should be used.

A good deal of confusion has been caused in some stations of the Manhattan Subway where there are exits on two different streets, as for instance, in Fulton and John streets. It is noticed that many people do not know of the exit at John street, which is not so well known a street as Fulton street, and are often carried a block beyond the one most convenient.

In view of these considerations and of the further one that there are obvious objections to using the name Bridge street, at which there is also an exit, I have to recommend that the station be designated as the Hoyt-Duffield street station.

### Stoppage of Work on Broadway Extension of Subway.

The board of aldermen adopted a resolution condemning delay in the erection of station at 231st, 238th and 242d streets.

#### OPINION OF COMMISSION.

(Adopted March 17, 1908.)

COMMISSIONER EUSTIS:

In the matter of the resolution of the board of aldermen referred to us by the corporation counsel on March 10th relating to the stoppage of work on the Broadway extension of the subway, and which was referred to me for report, I beg to say that I have inquired into the facts through the engineer's department and find that this work was stopped in November last on account of the failure of the company to get the steel needed for the construction of the Two Hundred and Thirty-first and Two Hundred and Thirty-eighth street stations, and for the further reason that at that time the owner of a part of the property in Two Hundred and Thirty-first street that is to be taken in the widening of the street refused to allow the construction to go on at that time as the title to the property had not vested in the city. I understand that after the work stopped this gentleman changed his mind and sent word through the alderman for the district that he was willing to allow the work to proceed at that point, and as soon as this information was received orders were given to the Rapid Transit

## 338 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Construction Company to proceed at once with their work, which was done on March 2d. They are now working four gangs of riveters and expect more to be at work in a few days, that most of the steel work has been delivered and the rest will be on hand as soon as needed, and the work will be pushed rapidly until the same is completed, which the company expect will be done before the first of June.

It was ordered that a copy be transmitted to the Board of Aldermen.

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### Sale of Buildings on Property Acquired for Rapid Transit Purposes.

\* [While under the Rapid Transit Act proceeds of sales of buildings are to be applied under the direction of the Commission, such proceeds are not to be handled by the Commission but by the city authorities.]

The commissioners of the sinking fund adopted the following resolution:

"Resolved, That the Commissioners of the Sinking Fund hereby decline to authorize or approve the sale of any buildings upon property acquired for rapid transit purposes, at the request of the Public Service Commission whenever the application contains a request that the proceeds of such sale be turned over to the Public Service Commission."

The chairman, on behalf of the Commission, made the following reply thereto:

N. TAYLOR PHILLIPS, *Secretary, Commissioners of the Sinking Fund of The City of New York:*

SIR.—On behalf of the Public Service Commission for the First District, I beg to acknowledge receipt of certified copy of resolution, adopted by the Commissioners of the Sinking Fund May 27, 1908, as follows:

"Resolved, That the Commissioners of the Sinking Fund hereby decline to authorize or approve the sale of any buildings upon property acquired for Rapid Transit purposes, at the request of the Public Service Commission whenever the application contains a request that the proceeds of such sale be turned over to the Public Service Commission."

There seems to be some misapprehension on the part of the Commissioners of the Sinking Fund with respect to the position of the Public Service Commission on the proper disposition of the proceeds of sale of buildings or other property no longer necessary for rapid transit purposes. This Commission has not requested that the proceeds of any such sale "be turned over" to it. The provision in the resolution heretofore submitted to the effect that the proceeds of sale be applied "either to the purchase of other property necessary for rapid transit purposes or shall be applied in all respects as the payments of rental to be made by the contractor as provided in this act" was pursuant to section 39 of the Rapid Transit Act, as amended by chapter 587, Laws of 1901, and chapter 564, Laws of 1904. While under that act, as amended, the proceeds of sale are to be applied *under the direction of this Commission as successor of the Board of Rapid Transit Railroad Commissioners*, the proceeds of sale are of course not to be handled by this Commission but by the city authorities. The only desire of the Commission is to have the buildings, which now are an encumbrance, removed as speedily as possible and the proceeds applied according to law.

If the Commissioners of the Sinking Fund have any doubt as to the force and application of section 39 of the Rapid Transit Act, it is respectfully suggested that the advice of the corporation counsel be taken on the subject before a final decision is made that would unnecessarily delay the progress of public improvements and add to the expense thereof.

Very truly yours,  
(Signed) WM. R. WILLCOX.

June 2, 1908.

Chairman.

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\* See footnote, page 0.

**Interborough Rapid Transit Company.—Additional subway service.**

In the Matter

of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and equipment of the INTERBOROUGH RAPID TRANSIT COMPANY.

ORDER No. 259.  
Dismissing proceedings  
under Order No. 111.  
February 11, 1908.

Subway increase under Order No. 111.

This matter coming on upon the report of the hearing had on December 11, 1907, December 20, 1907, December 23, 1907, January 15, 1908, and January 29, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made November 27, 1907, and returnable on December 11, 1907, and that said order was duly served upon the said Interborough Rapid Transit Company, and that said hearing was held by and before the Commission on the matters in said order specified on said December 11, 1907, December 20, 1907, December 23, 1907, January 15, 1908, and January 29, 1908, Mr. Commissioner Eustis presiding, Mr. Alfred A. Gardner, appearing for the Interborough Rapid Transit Company, and Mr. Oliver C. Semple appearing for the Commission;

Now, it being made to appear after the said hearing that under the new schedule of the company adopted January 9, 1908, a number of cars greater than that specified in the order for hearing has been added by said company since the order was served;

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered*, That this proceeding be and the same hereby is dismissed, and that this order be filed in the office of the Commission.

**Additional Stairways to Subway Platforms at One Hundred and Thirty-seventh and One Hundred and Forty-fifth Streets.**

ORDER NO. 291.

February 28, 1908.

Whereas, In the opinion of the Public Service Commission for the First District, the station facilities at the stations of the Manhattan-Bronx subway at One Hundred and Thirty-seventh street and Broadway and at One Hundred and Forty-fifth street and Broadway, are inadequate to accommodate the traffic at these points; and

Whereas, the contract of 21st of February, 1900, between the city of New York and John B. McDonald under which the said subway was constructed, provided for the authorization of extra work as a part thereof;

*Now, therefore, be it resolved*, That the contractor be and he hereby is authorized and directed to construct one additional stairway to the east platform of the station at One Hundred Thirty-seventh street and Broadway and one additional stairway to the east platform of the station at One Hundred Forty-fifth street and Broadway, in accordance with the plans submitted and numbered T-436, 1728, T-329, T-330, T-423 and S-145, as extra work under the said contract, at an expense of not to exceed five thousand two hundred and eighty dollars (\$5,280) for the additional stairway at the station at One Hundred Thirty-seventh street and Broadway, and at an expense of not to exceed twenty-two thousand one hundred and ten dollars (\$22,110) for the construction of such stairway at the station at One Hundred Forty-fifth street and Broadway, such expense to be paid by the city and to be added to the cost of constructing the said Subway upon which the contractor is to pay rental as in such contract provided.

**Interborough Rapid Transit Company.—Inconvenient location  
of ticket box at Kingsbridge subway station.**

**Complaint Order No. 306.  
Discontinuance Order No. 349.**

**COMPLAINT OF J. IRVING BURNS**

*against*

## INTERBOROUGH RAPID TRANSIT COMPANY.

Complaint Order No. 306 (see form, note 1), issued March 3d.

The matters complained of were satisfied by the company and the following discontinuance order was issued:

**J. IRVING BURNS,** *Complainant,*  
*against*

**INTERBOROUGH RAPID TRANSIT COMPANY,  
*Defendant.***

"Inconvenient location of the ticket-box at the Kingsbridge Subway Station."

**DISCONTINUANCE ORDER**  
**No. 349.**

**March 20, 1908.**

An order, No. 306, having been made herein on or about the 3d day of March, 1908, ordering and directing the Interborough Rapid Transit Company to answer complaint herein, within a time therein specified, and the said Interborough Rapid Transit Company having, on March 12, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied,

Now, upon motion made and duly seconded, it is  
*Resolved*, That the proceedings herein be, and the same hereby are, discontinued.

**Interborough Rapid Transit Company.**— Ticket booths in the subway station at Brooklyn bridge.

**Complaint Order No. 335.  
Dismissal Order No. 394.**

**COMPLAINT OF WILLIAM C. STILES**

*against*

## INTERBOROUGH RAPID TRANSIT COMPANY.

Complaint Order No. 335 (see form, note 1) issued March 13th.

From investigations made on March 30th and 31st it appeared that the ticket selling force was adequate. The following dismissal order was issued:

**WILLIAM C. STILES,** *Complainant.*  
*against*

**INTERBOROUGH RAPID TRANSIT COMPANY,  
*Defendant.***

"Ticket booths in subway station at Brooklyn Bridge."

**DISMISSAL ORDER No. 394.  
April 3, 1908.**

An order of the Commission, No. 335, having been made herein on the 13th day of March, 1908, ordering and directing the Interborough Rapid Transit Company to answer or satisfy the charges set forth in the complaint herein and the said Interborough Rapid Transit Company having made answer thereto on or about the

23d day of March, 1908, and it appearing from inspection and report thereon made herein by the Bureau of Transit Inspection of the Commission on or about the 30th day of March, 1908, that the regulations and practices of the said company with respect to selling tickets at the subway station at the Brooklyn Bridge are adequate, it is

*Ordered*, That said complaint be, and the same hereby is, dismissed, and that this order be filed in the office of the Commission; and it is further

*Ordered*, That this order shall be without prejudice to such other action as the Commission may wish to take in this proceeding, or upon a new complaint in respect to any of the matters covered by the order No. 335 above mentioned.

### Broadway-Lexington Avenue Rapid Transit Route.— Location and style of stations.

In the Matter of the Public hearing to receive suggestions as to the location and style of stations on the Broadway Lexington Avenue Rapid Transit Route.	ORDER No. 448. May 1, 1908.
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*Resolved*, That a public hearing be given in the hearing room of the Commission at 154 Nassau street at 4 P. M., Wednesday, May 13, 1908, in order to receive suggestions as to location and style of stations on the Broadway-Lexington Avenue Rapid Transit Route, and that individuals or associations are invited to be present and to file briefs or memoranda in the above matter.

### Interborough Rapid Transit Company.— Leak in patent lights at foot of stairs, subway station, Forty-second street side at Broadway.

COMPLAINT OF JAMES B. REGAN

against

INTERBOROUGH RAPID TRANSIT COMPANY.

Complaint Order No. 460 (see form, note 1) issued May 5th.

The company answered on May 15th and agreed, upon having secured a permit to open the street and ascertain cause of the leakage, to satisfy the matters complained of.

### Interborough Rapid Transit Company.— Emergency organization for use in case of accident.

In the Matter of the Hearing on motion of the Commission on the question of improvements in and additions to the regulations, equipment, and appliances of the Interborough Rapid Transit Company.	HEARING ORDER No. 477. May 12, 1908.
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"Emergency organization for use in case of accidents."

*It is hereby ordered*, That a hearing be had on the 25th day of May, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, number 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, equipment and appliances of the Interborough Rapid Transit Company in respect

## 342 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

to transportation of passengers on its subway system in the first district are unsafe, improper, or inadequate, and whether improvements in and additions to the regulations, equipment and appliances of said company ought reasonably to be made in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers and property, and if such be found to be the fact, then to determine whether changes, improvements in and additions to said regulations equipment and appliances as hereinafter set forth are such as would be just, reasonable, safe, adequate, and proper, and ought reasonably to be made to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property; that is to say:

(1) Whether said company should be directed to maintain a complete emergency organization at accessible points in its subway system for use in case of accident;

(2) Whether said company should be directed, when a tie up on a portion of the subway system makes it necessary to switch express trains to the local tracks, to use the crossover nearest the point of delay and, when this is done, immediately so inform all trainmen and stationmen affected by it;

(3) Whether said company should be directed to change the location of the block signal at Willow street to a point east of the Borough Hall, Brooklyn station.

And if any such changes, improvement and addition be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed and in what manner such changes should be directed to be made.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said Interborough Rapid Transit Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing, said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held May 25th and 26th.

### Broadway-Lexington Avenue Subway.—Junction point of branches in the Bronx.

In the Matter  
of the

Public Hearing on the question whether the route of the BROADWAY-LEXINGTON AVENUE SUBWAY should be so modified as to provide a transfer point between the two branches of the Subway in the Bronx at One Hundred and Thirty-eighth Street.

ORDER No. 511.  
May 19, 1908.

Resolved, That a public hearing be held in the rooms of the Commission at No. 154 Nassau street on Monday, May 25, 1908, at 4 p. m. for the purpose of discussing the proper junction point between the two branches of the Broadway-Lexington Avenue Subway in the Bronx.

Hearing held May 25th.

### Interborough Rapid Transit Company.—Enclosures to prevent draughts at One Hundred and Sixty-eighth street and One Hundred and Eighty-first street stations.

Final Order No. 402.  
Final Order No. 560.

In the Matter  
of the

Construction of elevator enclosures to prevent draughts at One Hundred and Sixty-eighth Street and One Hundred and Eighty-first Street Stations.

ORDER No. 402.  
April 7, 1908.

Upon motion made and duly seconded, it is

Resolved, That the Interborough Rapid Transit Company be, and it hereby is, ordered to obtain proposals for constructing glass elevator enclosures at the bottom of the shafts at the One Hundred and Sixty-eighth street and One Hundred

and Eighty-first street stations to prevent strong draughts, in accordance with the Public Service Commission plans Numbers T-472 and T-473 respectively.

Such additional details, supplementary plans and specifications as may be required to be furnished to the Interborough Rapid Transit Company by the Public Service Commission; said proposals to be submitted to the Public Service Commission for its approval before any work is proceeded with; and it is further

*Resolved*, That the work of constructing the above elevator enclosures, when authorized, is to be executed and paid for as an Extra under Contract No. 1 entered into between John B. McDonald and the City of New York, February 21, 1900.

ORDER No. 560.  
MODIFYING ORDER No. 402.

June 9, 1908.

Upon motion made and duly seconded it is

*Resolved*, That the resolution of the Commission adopted on the 7th day of April, 1908, and known as Order No. 402 be modified to include the Mott avenue station so as to read as follows:

ORDER No. 402.

Upon motion made and duly seconded, it is

*Resolved*, That the Interborough Rapid Transit Company be, and it hereby is, ordered to obtain proposals for the construction of glass elevator enclosures at the bottom of the shafts at the One Hundred and Sixty-eighth street, One Hundred and Eighty-first street, and Mott avenue subway stations to prevent strong draughts, in accordance with the Public Service Commission plans Numbers T-472 and T-473 respectively.

Such additional details, supplementary plans and specifications as may be required to be furnished to the Interborough Rapid Transit Company by the Public Service Commission; said proposals to be submitted to the Public Service Commission for its approval before any work is proceeded with; and it is further

*Resolved*, That the work of constructing the above elevator enclosures, when authorized, is to be executed and paid for as an Extra under Contract No. 1 entered into between John B. McDonald and the City of New York, February 21, 1900.

**Interborough Rapid Transit Company.— Removal of side-tracks  
in Twelfth avenue and Fifty-ninth street.**

In the Matter  
of the  
Removal by the INTERBOROUGH RAPID TRANSIT  
COMPANY of a side-track in Twelfth avenue and  
Fifty-ninth street.

ORDER No. 595.

June 23, 1908.

Whereas, the city of New York, acting by the Board of Rapid Transit Railroad Commissioners, issued a permit to John B. McDonald, June 26, 1903, authorising the construction of "a temporary side-track to make connection with the Twelfth Avenue track of the New York Central & Hudson River Railroad at a point about fourteen feet north of the north line of Fifty-ninth Street and to lay a temporary side-track from this point through Twelfth Avenue and Fifty-ninth Street to the Power House site," that is, to the site of the present power house of the Interborough Rapid Transit Company; and

Whereas, said permit was renewed with the express provision that it would expire and be of no force on and after January 1, 1907, and consequently no authority to maintain the said track now exists;

*Therefore, resolved*, That the Interborough Rapid Transit Company within twenty (20) days of the date of this order, remove said track and restore the said Twelfth avenue and Fifty-ninth street to a condition satisfactory to the president of the borough of Manhattan.

**Interborough Rapid Transit Company.— Failure of subway  
trains to stop at Mott Avenue station.**

Complaint Order No. 781.  
Hearing Order No. 813.

COMPLAINT OF CHARLES H. BAXTER  
*against*

INTERBOROUGH RAPID TRANSIT COMPANY.

Complaint Order No. 781 (see form, note 1) issued October 13th.

Hearing Order No. 813 (see form, note 3) issued October 30th.

Hearings were held November 11th and 17th.

**Interborough Rapid Transit Company — Side Doors — Changes  
in cars now in use and type of cars to be purchased for future  
use in the subway.**

Hearing Order No. 270.  
Opinion of Commissioner Eustis.  
Final Order No. 629.  
Extension Order No. 783.  
Extension Order No. 835.  
Extension Order Case 629.

In the Matter  
of

The hearing on the motion of the Commission on the question of improvement in and addition to the service of the INTERBOROUGH RAPID TRANSIT COMPANY, in respect to changes in cars now in use and in respect to type of car to be purchased for future use in the subway.

ORDER FOR HEARING  
No. 270.  
February 18, 1908.

*It is hereby ordered,* That a hearing be had on the 4th day of March, 1908, at 11 o'clock in the forenoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Interborough Rapid Transit Company in respect to transportation of persons in the First District, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances and service of said company as hereinafter set forth are such as will be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

1. Whether all cars now used by the Interborough Rapid Transit Company should be equipped with an additional side door or doors on each side, and to determine the manner of altering the construction of all cars now in use, with a view to facilitating the loading and unloading of passengers.

2. Whether all cars purchased for future use by the Interborough Rapid Transit Company should be equipped with a side door or doors on each side so arranged as to facilitate the loading and unloading of passengers.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Interborough Rapid Transit Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held March 4th, April 28th, May 12th and 13th.

Side Doors.

\*[The use of cars in the subway with side doors would reduce the time consumed in station stops and increase the efficiency of the subway.]

The fact that the present subway equipment was approved by the Rapid Transit Commission when put in operation does not preclude the Commission from ordering improvements to the same.)

OPINION OF COMMISSION.

(Adopted July 10, 1908.)

COMMISSIONER EUSTIS:—

This question was brought on for a public hearing after the Commission had had the question thoroughly investigated by Bion J. Arnold, an expert transit engineer.

\* See footnote, page 9.

Mr. Arnold after thoroughly investigating the workings of the present subway presented a report to the Commission in which he recommended a change in the type of cars, and on receiving that report public hearings were given and the Interborough Company was allowed to present its evidence in opposition to the recommendation of Mr. Arnold's report.

The report of Mr. Arnold and his evidence given upon the hearings had in this matter conclusively show that the use of cars in the subway with side doors would largely reduce the time consumed in station stops, and thereby increase the efficiency of the subway.

The type of car recommended by Mr. Arnold was that of two additional side doors in each car, located near the end of the car, and so constructed that they would slide into a recess where the present doors are now slid when the door is opened, and could be operated by the same guard. This would necessitate removing two seats for each door, or eight seats in each car, and to this extent it would reduce the seating capacity of the cars, but the time saved in the actual movement of the trains would be sufficient to pass by any given point as large or a larger number of seats from the fact that the schedule movement of the trains could be very much accelerated. If there was no other limiting feature in the operation of the subway this result would certainly be obtained.

The Interborough people contested very strenuously the recommendations of Mr. Arnold, and placed upon the stand Mr. Frank Hedley, their manager, a man of large experience in railway operations, as their expert, and his evidence was that the benefits of the side door as recommended by Mr. Arnold would not be beneficial for various reasons. One was that in order to make them effective you would have to create a circulation inside of the car, that the people would have to be educated to come in one door and out of the other, and that owing to the congested condition of the platforms at some of the stations it would be impossible for people wanting to get in the entrance door to get through the crowd because the people would not move out of their way, and this theory was advanced by the counsel for the company very strenuously, going so far as to state that the congestion that now often exists on the platforms would be transferred from the platforms into the inside of the car and it would make great confusion. I am thoroughly satisfied that there is nothing in this objection raised by the company to the use of the side doors. I believe in the intelligence of the people traveling upon the subway and that they would willingly adapt themselves to a change which gave them one door for exit and one for entrance in place of having to submit to an exit and entrance through the same door and at the same time.

Another of the strenuous objections that was made by the company, and upon which point they put much stress, was the recommendation by Mr. Arnold for curved railings on the platform to be used in connection with the side doors. This recommendation was made for the purpose of adding further to the benefits of the side door, but was not considered of any absolute necessity in connection with the side door, excepting to perhaps add somewhat to its availability. The evidence produced by the company on the hearing was to the effect that the trains could not be brought to a sufficiently definite stopping point to make those railings available; but as the railings were only an additional recommendation and not at all necessary to the operation of the side doors, and, to my mind, of very little benefit after the people have once become accustomed to the use of the side door, I do not consider this objection meritorious.

In a recent conference with the officers of the company they have also stated that this Commission had approved, through its predecessors, the Rapid Transit Commission, the present cars, and were therefore to a certain extent at least morally bound to permit them to use the present equipment until they were worn out, or practically so at least. I am frank to confess that there is some merit in this contention of the company, nevertheless the fact that the present equipment was approved by the Rapid Transit Commission four years ago when same was purchased and put in operation does not preclude this Commission from ordering improvements to same. The lease of the road provided that the company should at all times provide cars, rolling stock of the best character known at the time to

the art of intra-urban railway operation, and it is not to be presumed that what was of the best character known at that time is of the best character known at another time some years subsequent thereto. And the lease further provides that in case the lessees neglect to so equip the railroad with cars and rolling stock of the best character known, the Board may upon notice require them to make good.

Another serious objection raised by the defendant is the loss of fifteen per cent. of the number of seats in each car, and in order to carry an equal number of seats they will be required to increase their car mileage by a very large number of miles.

This can be overcome in so far as their required seating capacity is to be enforced by this Commission by allowing the cars that are first equipped with side doors to be rated with their original number of seats until there have been a sufficient number of cars changed so that the benefits derived from the shorter intervals at station stops can be fully realized. It is very evident that by changing a few of the trains and putting them in service on the express line no substantial benefits can be obtained, because those trains will not be able to go any faster than they are scheduled, and the schedule can only be adapted upon the speed of the slowest train in the circuit. The only direct benefit that will be received by the people will be the doing away with the unseemly rushing and crushing at some of the stations for a few passengers, which was described by the counsel for the defendant upon one of the hearings as a disgraceful exhibition, and in another place stated that at Fourteenth and Forty-second street stations modest women were subjected to violent indignities. And if it is not possible to eliminate all of this congestion, if it is done to a certain extent, with the knowledge that it will eventually all be eliminated, it will certainly be appreciated by the traveling public. It will also settle the question that has been disputed by the defendant in this matter as to whether side door cars will be more serviceable and help in a large measure to make the subway more resourceful when the Ninety-sixth street changes are completed.

The company claim that the subway is now operated to its full capacity during the so-called rush hours, that even had they side doors requiring shorter stops the condition of the tracks at Ninety-sixth street would make it impossible to realize any benefit until the improvements at that point are completed. Admitting this to be so, it would be losing valuable time to wait until the Ninety-sixth street changes are completed before the changing of the cars into side door cars is begun. I realize that the changing of these cars must be done without crippling to any degree their service, and therefore must necessarily be done in a few cars at a time, and will extend over a considerable period of time. I would therefore recommend that the company be required to put side doors near the ends of enough of their cars to make up at least two express trains, eight cars each, in order to give this type of car a fair and impartial trial. And after such trial, if the same proven satisfactory to the Commission, to require the rest of the cars used in the express service to be gradually converted into side door cars as they can be withdrawn from use without detriment to the service, so that when the Ninety-sixth street changes are completed the work of changing the equipment into side doors will be well advanced and not just beginning. And I submit the following order.

Thereupon the following final order was issued:

FINAL ORDER No. 629.

July 10, 1908.

This matter coming on upon the report of the hearing had herein on March 4, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made February 18, 1908, and returnable on March 4, 1908, and that the said order was duly served upon the Interborough Rapid Transit Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on March 4, 1908, and by adjournment duly had on April 28, 1908, and by adjournment duly had on May 18, 1908, and by adjournment duly had on May 13, 1908, all of which sessions were held before Mr. Commissioner Euatis presiding, Arthur DuBols, Esq., assistant counsel, appearing for the Commission, and Alfred

A. Gardner, Esq., appearing for the Interborough Rapid Transit Company, and by adjournment duly had on June 10, 1908, before Mr. Commissioner Willcox presiding, Arthur DuBois, Esq., Assistant Counsel, appearing for the Commission, and Alfred A. Gardner, Esq., appearing for the Interborough Rapid Transit Company, and by adjournment duly had on June 29, 1908, before Commissioners Eustis, Willcox and Bassett, Arthur DuBois, Esq., Assistant Counsel, appearing for the Commission, Alfred A. Gardner, Esq., appearing for the Interborough Rapid Transit Company, and proof having been taken at all of said sessions:

Now, it being made to appear after the proceedings upon said hearing that the regulations, equipment, appliances and service of the Interborough Rapid Transit Company, in respect to transportation of persons and property in the First District on its line known as the subway, have been and are in certain respects unsafe, unreasonable, improper and inadequate in that the cars operated in said subway are insufficiently provided with doors, and it being made to appear that changes and improvements ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public, or to secure adequate service and facilities for the transportation of passengers, and it appearing that the changes and improvements as below set forth are such as are just, reasonable, safe, adequate and proper;

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered:*

1. That the Interborough Rapid Transit Company by alteration and reconstruction of cars now in use on its subway, provide, for use in the subway, not less than sixteen cars of the type described in figure 14 of the report of Mr. Bion J. Arnold, dated February 18, 1908, and entitled "The Subway Car," being the Commission's Exhibit 1, of March 4, 1908, copy of which is hereto attached, this type of car being designated in said report as "Car with double doors near ends." The cars to be provided shall have four doors on each side, two of the doors on each side being in the position of the doors on cars now in use in the subway, and two additional doors on each side to be of the same size as and to be placed not less than one nor more than two doors' width from the doors now in use.

2. The Interborough Rapid Transit Company shall equip these cars with pneumatic or other mechanical or electrical devices so arranged as to open and close the doors quickly, and automatically to signal to the motorman when the doors are closed.

3. That the sixteen cars to be reconstructed be so arranged that two trains of eight cars may be made up. Not less than one-half of the sixteen cars so reconstructed shall be equipped with motors.

4. Before reconstruction of the cars above described a full set of plans showing in detail the method of reconstruction shall be submitted to the Public Service Commission for the First District for approval.

5. The cars as ordered above shall be completed and ready for operation not later than October 15, 1908, and notice shall be given to the Public Service Commission for the First District when the cars are ready for operation.

6. The cars as reconstructed shall have adequate and conspicuous signs informing passengers that the doors nearer the end of each car are entrance doors, and the doors nearer the middle are exit doors.

7. The said cars as reconstructed shall be operated daily on the express service in the subway during the morning and evening rush hours on and after October 15, 1908, and notice shall be given to the Public Service Commission for the First District at least three days before said cars are to be operated.

8. The Interborough Rapid Transit Company shall take such other and further steps as may be necessary to provide as aforesaid the subway car described and shown in figure 14 of the said report of Mr. Bion J. Arnold, dated February 18, 1908, and shall do everything necessary to secure as aforesaid a fair trial for the operation of the cars hereby ordered.

9. The provisions of this order shall take effect at once, and shall continue in force until fully complied with.

10. *Further ordered.* That before July 15, 1908, the Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon applications of the company the following extension orders were issued:

EXTENSION ORDER No. 783.

October 16, 1908.

An order, No. 629, having been made herein on or about the 10th day of July, 1908, ordering and directing the Interborough Rapid Transit Company to reconstruct and have ready for operation not later than October 15, 1908, sixteen cars having four doors on each side, and the said Interborough Rapid Transit Company having, on the 12th day of October, 1908, applied in writing for an extension of such time.

Now, on motion made and duly seconded, it is

*Ordered.* That the time within which the Interborough Rapid Transit Company shall comply with the terms of Order No. 629 be, and the same hereby is, extended to and including the 15th day of November, 1908.

## EXTENSION ORDER No. 835.

November 16, 1908.

An order, No. 629, having been made herein on or about the 10th day of July, 1908, ordering and directing the Interborough Rapid Transit Company to reconstruct and have ready for operation not later than October 15, 1908, sixteen cars having four doors on each side, and the time within which to comply with said Order No. 629 having been extended to and including November 15, 1908, by the terms of Order No. 783 adopted October 16, 1908, and the said Interborough Rapid Transit Company having, on the 12th day of November, 1908, applied in writing for a further extension of such time.

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Interborough Rapid Transit Company shall comply with the terms of Order No. 629 be, and the same hereby is, extended to and including the 25th day of November, 1908.

## CASE No. 629 — EXTENSION ORDER.

November 27, 1908.

An order, No. 629, having been made herein on or about the 10th day of July, 1908, ordering and directing the Interborough Rapid Transit Company to reconstruct and have ready for operation not later than October 15, 1908, sixteen cars having four doors on each side, and the time within which to comply with said Order No. 629 having been extended to and including November 15th, 1908, by the terms of Order No. 783, adopted October 16, 1908, and the time within which to comply with said Order No. 629 having been further extended to and including November 25, 1908, by the terms of Order No. 835 adopted November 16, 1908, and the said Interborough Rapid Transit Company having, on the 24th day of November, 1908, applied in writing for a further extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Interborough Rapid Transit Company shall comply with the terms of Order No. 629 be, and the same hereby is, extended to and including the 15th day of January, 1909.

### Interborough Rapid Transit Company.— Placing and maintenance of vending and weighing machines in the Brooklyn-Manhattan subway.

In the Matter  
of the

Hearing on Motion of the Commission as to the  
Regulations, Practices, Equipment and Service of  
the INTERBOROUGH RAPID TRANSIT COMPANY  
in respect of the Placing and Maintenance  
of Vending and Weighing Machines in the  
Brooklyn-Manhattan Rapid Transit Railroad.

} HEARING ORDER No. 839.  
November 13, 1908.

*It is hereby Ordered*, That a hearing be had on the 25th day of November, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of Interborough Rapid Transit Company in or upon the rapid transit subway railroad operated by it between a point near the general post office in the borough of Manhattan and the Long Island railroad station in the borough of Brooklyn, in respect of the placing and maintenance of vending and weighing machines within such subway are unjust, unreasonable, unsafe, improper or inadequate and if it be so found, then to determine whether changes in such regulations, practices, equipment, appliances or service at the place or places herein mentioned will be just, reasonable, safe, adequate and proper and whether changes should be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in respect of the matters mentioned, ought reasonably to be made to promote the security or convenience of the public or employees, or in order to secure adequate facilities for the transportation of passengers, freight or property. It is

*Further ordered*, That the said Interborough Rapid Transit Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held November 25th, 27th, and December 2d.

**Interborough Rapid Transit Company.—Lack of destination signs in subway trains.**

Case 1005, Complaint Order.  
 Case 1005, Extension Order.  
 Case 1005, Hearing Order.

**COMPLAINT OF THE PUBLIC SAFETY COMMITTEE, OF NEW YORK CITY FEDERATION OF WOMEN'S CLUBS; RAPID TRANSIT COMMITTEE OF ONE HUNDRED**

*against*

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Complaint Order (see form, note 1) issued December 1st.

Extension Order (see form, note 2) issued December 11th.

Hearing Order (see form, note 3) issued December 31st.

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**Interborough Rapid Transit Company.—Advisability of building a subway station at or near One Hundred and Ninetieth street on the Broadway division.**

In the Matter

of the

Hearing on motion of the Commission as to the advisability of building a subway station at or near One Hundred and Ninetieth street on the Broadway Division of the INTERBOROUGH RAPID TRANSIT COMPANY.

CASE 1021,  
 HEARING ORDER.  
 December 15, 1908.

*It is hereby ordered.* That a hearing be had on January 6, 1909, at 4 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at Number 154, Nassau street, borough of Manhattan, city and State of New York, to inquire into the advisability of the building of a subway station at or near One Hundred and Ninetieth street on the Broadway Division.

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**Interborough Rapid Transit Company.—Suggested change of name of the subway station at Sixty-sixth street to "Lincoln Square."**

In the Matter

of the

Hearing on motion of the Commission on the question of the suggested change of name by the INTERBOROUGH RAPID TRANSIT COMPANY of the subway station at Sixty-sixth street to Lincoln square.

CASE No. 1023,  
 HEARING ORDER.  
 December 22, 1908.

*It is hereby ordered.* That a hearing be had on the 13th day of January, 1909, at 4 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at Number 154 Nassau street, borough of Manhattan, city and State of New York, to inquire into the question of the suggested change of name of the subway station at West Sixty-sixth street to Lincoln Square.

*Further ordered,* That the Interborough Rapid Transit Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order.

**Interborough Rapid Transit Company.—Steinway Tunnel.—**  
 Proposal that the city of New York should purchase.

Letter of Chairman Willcox.  
 Report entitled "The Steinway Tunnel."  
 Report of committee.  
 Case 1029, resolution.

In February, 1908, the Senate passed a resolution concurred in by the Assembly requesting information as to what steps the Commission has taken towards the speedy operation of the Steinway tunnel. The following reply was sent thereto:

LETTER OF CHAIRMAN WILLCOX.

New York, February 19, 1908.

*To the Honorable, the Senate of the State of New York:*

The Public Service Commission for the First District respectfully submits herewith its reply to the resolution of the Senate, dated February 5, 1908, concurred in by the Assembly February 12, 1908, received by the Commission February 14, 1908, requesting information as to what steps the Commission has taken towards the speedy operation of the Steinway Tunnel, and any other information received by the Commission in connection therewith.

The so-called Steinway Tunnel has been constructed by the New York and Long Island Railroad Company and financed by the Interborough Rapid Transit Company, which controls the tunnel company through stock ownership.

The city of New York and the New York and Long Island Railroad Company have been engaged in litigation since February, 1906, over the right of the company to construct this tunnel. The city claimed that the company was not a legal corporation; that it had no right to construct the tunnel; that even if it ever were a lawful corporation its corporate existence and powers ceased on January 1, 1907; and that its New York City franchises also expired at the same time.

In passing upon the claim of the city, Mr. Justice Davis, of the Supreme Court, in an opinion rendered December 9, 1907, said:

"The failure of the defendant to comply with the Railroad Law as to completion and operation of the railroad was *ipso facto* an extinction of the corporation, and it does not require the bringing of an action to dissolve the corporation (Matter of Brooklyn, Winfield & Newtown R'y, 72 N. Y., 245). And the so-called franchises mentioned in the complaint were immediately extinguished (see Brooklyn, Q. Co. & Sub. R. R., 185 N. Y., 185).

"It thus appears from the complaint that the action is brought against a defendant that has no existence. The defendant being dead in the sense referred to above there can be no pleading to the complaint on behalf of that defendant. \* \* \*

"I do not agree with the demurrant's view that the property rights and franchises mentioned in the complaint survive the extinction of the defendant's corporate existence and pass to the directors as trustees for the benefit of those concerned, and that these trustees are the proper parties defendant. If this were so the trustees might take their own time to build the road and thus defeat the very purpose of the statute to insure a speedy completion of the work for public uses (Matter of B'klyn, Q. Co. & Sub. R. R., 185 N. Y., 171, 185). \* \* \* My conclusion is that the demurrer is not properly interposed and has no standing in the case. The demurrer really admits that there is no defendant here. As a matter of fact there is no action pending, nor was there at the time the demurrer was served. Submit decision and judgment in accordance with these views."

An appeal in one of the actions between the city and the company is now on the calendar of the Court of Appeals and may be argued within the next two months. The entire litigation on behalf of the city is in the hands of the Corporation Counsel.

More detailed information in relation to this tunnel and to the matters in controversy will be found in the report herewith transmitted, entitled "The Steinway Tunnel."

If the New York and Long Island Railroad Company has forfeited its corporate rights and franchises, the Commission is without present power to compel the operation of the tunnel, and pending the final determination of the rights of the parties to the litigation any attempt to do so would be premature and improper.

Respectfully yours,

WM. R. WILCOX,

*Chairman.*

THE STEINWAY TUNNEL.

The tunnel extending from Manhattan to Queens, along the line of Forty-second street, commonly called the "Steinway Tunnel," has been constructed by a private company, and is not a part of the rapid transit system laid out by the Public Service Commission, or its predecessors. No application has been made to the Commission, under any section of the Public Service Commissions Law, by the owners of the tunnel, and no proposition looking towards the granting of a franchise to operate has been presented to the Commission for consideration. But the present situation is so peculiar and so many inquiries have been made at the office of the Commission that a statement of the facts up to December 31, 1907, may be of interest and value.

*Origin of the Company.*—The tunnel was originally begun by the New York and Long Island Railroad Company, which was incorporated July 30, 1887, under chapter 140 of the Laws of 1850, known as the General Railroad Act, and the amendments thereto. The articles of association provided that the company was to continue in existence for ninety-nine (99) years; that the capital stock was to be \$100,000, consisting of 1,000 shares, at \$100 each, and that a railroad was to be constructed and operated about five miles in length, extending from a point near Borden avenue, Queens, one mile from the East river; thence under the river and under certain streets and lands in Manhattan to a connection with the New York Central and Hudson River Railroad at or near the intersection of Ninth avenue and Thirtieth street, New York city, with a branch northerly to connect with the New York Central and Hudson River Railroad, near the Grand Central depot, and a branch southerly to connect with the Hudson River tunnel in the vicinity of Washington square.

The General Railroad Act of 1850 was amended by chapter 775 of the Laws of 1887, which provided, among other things, that if any corporation organized under the Act of 1850,

"shall not, within five years after its articles of association are filed and recorded in the office of the Secretary of State, begin the construction of its road, and expend thereon ten per cent on the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing its articles of association, as aforesaid, its corporate existence and powers shall cease."

*Work not completed.*—It therefore became incumbent upon the New York and Long Island Railroad Company to have begun construction of the tunnel and to have expended thereon \$10,000 by July 30, 1892, and to have finished it and put it in operation by July 30, 1897, under penalty of forfeiture of its corporate existence and powers.

The company's contractor started work in May, 1892, and it is claimed that up to July 30 of that year the sum of \$11,718.33 had been expended. Work continued down to December, 1892, when an explosion occurred, and for nearly thirteen years nothing further was accomplished. In resuming operations in 1905, eight years after the charter would have expired, under the Law of 1867, above quoted, the company relied upon a series of acts, the last of which, adopted in 1903, is claimed to have extended until January 1, 1907, the time within which the road should have been finished and put in operation. As a matter of fact, the tunnel was not finished and put in operation by this date.

*Franchise Grants.*— Incorporation did not of itself confer upon the company the right to begin work. Consents had still to be obtained from the local authorities and from the State of New York, which are as follows:

"(1) Resolution of the Board of Aldermen of the old City of New York, approved December 31, 1890.

(2) Patent issued by the State of New York, January 5, 1891.

(3) Resolution of the Board of Aldermen of Long Island City, approved October 27, 1891."

By the first resolution the City assented "to the construction of a double track railroad by the New York and Long Island Railroad Company, in, by and through a tunnel beneath the surface of Forty-second street, from its easterly end, to a point therein between Tenth and Eleventh avenues, in said City, with such connections, branches, turnouts, sidings and switches, as may be requisite and necessary in accordance with the plans and profiles of such railroad heretofore deposited with this Board, or such modification thereof as shall be approved by the Commissioner of Public Works of said City."

For compensation to the City of New York, the ordinance provided that the company should,

"pay annually to the City of New York three per centum of its gross earnings or receipts from transportation of persons and property on its railroad within said City; such payment to be exclusive of all taxes levied by and payable to the City of New York on the real or personal property, capital stock or income of said company, and the books of said company showing the amount of its said gross earnings or receipts shall, at all reasonable times and hours be open to the inspection of the Comptroller of the City of New York (or to his duly authorized agents) for the purpose of verifying the returns thereof of said company."

The consent of the State of New York was granted by the following patent:

"The People of the State of New York, by the Grace of God, Free and Independent: To all to whom these Presents shall come, Greeting:

"Know Ye, That, pursuant to chapter 140, Laws of 1850, as amended by chapter 601, Laws of 1886, and a resolution of the Commissioners of the Land Office adopted November 25, 1890, we have given and granted, and by these presents do give and grant unto the New York and Long Island Railroad Company, its successors and assigns, a right of way ninety-nine feet in width and fifty feet in height within which to construct a tunnel for the use and operation of the above-named grantees' railroad beneath the waters of the East River upon and along the route of said railroad, between the City of New York and Hunter's Point in Long Island City, as shown in plan and profile, upon the charts filed in the office of our Secretary of State, with the water grant papers of the month of January, 1891.

"Together with all and singular the rights, hereditaments and appurtenances to the same belonging, or in any wise appertaining; to have and to hold the above described premises unto the said the New York and Long Island Railroad Company, its successors and assigns forever."

Long Island City, by the last resolution referred to, assented to the construction of a double track railroad upon and along the following lines and routes:

"Route One—Beginning at a point under the ground at or near the westerly end of Fifth street and in the middle line thereof at low water mark, on the east side of the East River in said city; thence running easterly beneath streets and private property to a point at or near the intersection of Fourth street and West avenue; thence along Fourth street to or near Van Alst avenue, with a station hereafter to be located between the easterly shore of the East River and Van Alst avenue; thence northeasterly by a curved line to Meadow street; thence along Meadow street to Beach street; \* \* \* \*

The whole route may be indicated as follows:

A (New York City), B (Dock Property), C (East River), D-E (Long Island City), F.

A is Forty-second street at "a point therein between Tenth and Eleventh avenues," Manhattan.

B is "beneath the surface of Forty-second street from (at) its easterly end," Manhattan.

C to D is "beneath the waters of the East River upon and along the route of said railroad, between the City of New York and Hunter's Point in Long Island City, as shown in plan and profile, upon the charts filed in the office of our Secretary of State, with the water grant papers of the month of January, 1891."

E is "At or near the westerly end of Fifth street and in the middle line thereof at low water mark," Long Island City.

F is Meadow street at Beach street, Long Island City.

*Route as Constructed* — It will be noted that the route above described differs from the route set forth in the articles of association and from the location of the tunnel as actually constructed. The company claims to have obtained the legal right to make such alterations, but the Corporation Counsel of the City has denied this. The route as actually constructed is approximately as follows: From a loop at the intersection of Park avenue and Forty-second street, somewhat below the present subway, the line extends under Forty-second street, under the wharf property of the City at the end of Forty-second street, East River, to the west end of Fifth street, Long Island City; from thence it runs under private property to Fourth street, and under Fourth street to a point between Jackson and Van Alst avenues. The portion from Forty-second street to a point between Tenth and Eleventh avenues has not been constructed. The line is composed of two tracks for its entire length and for most of the distance each track is located in a separate tunnel.

A comparison of the route as actually built with the rights granted by the City of New York, the State of New York and Long Island City, shows how a difference of opinion has arisen as to whether the company has obtained the proper legal authority for the construction of a tunnel under dock property in New York City; that is, the section between "B" and "C" in the above diagram. The company claims that the resolution of the board of aldermen covers this section. The legal representatives of the City have claimed that jurisdiction over this strip of land 300 feet in width was vested in the Department of Docks, and that it was necessary to secure the consent of this Department for the construction of the route. The courts have not yet passed upon this point.

*City's Efforts to Stop Work* — When the company resumed work in 1905 it obtained from the Fire Commissioners of The City of New York licenses to use and keep explosives at the four shafts where it was prosecuting its work, and later in the year obtained permission from the Building Department to erect certain temporary structures. About this time there arose considerable discussion regarding the legal right of the company to proceed with the work. Many claim that the company had forfeited its charter because of its failure to complete the tunnel by July 30, 1892, and that it was proceeding illegally.

Upon January 22, 1906, the Inspector of Combustibles of the Fire Department, New York City, informed the contractors doing the work that four permits for blasting had been revoked "by direction of the Corporation Counsel." Two days later the Superintendent of Buildings informed the contractors that certain building permits had been revoked "for the reason that the right to build this tunnel is disputed." No infractions of the permits themselves were alleged. Thereupon the railroad company brought a suit to stay the revocation of the permits, and a preliminary injunction was granted. The main contentions of the Corporation Counsel in opposing an injunction were that the company was not a legal corporation and that it had no right to construct the tunnel. The case came first before Justice Blanchard of the Supreme Court who said:

"Independent of the foregoing considerations, however, the validity of the plaintiff's franchise, in which a large amount of capital is invested and great public interests are concerned, cannot properly be determined upon affidavits. To solve this question now against the plaintiff would permit such interference with the plaintiff's work as would prevent its completion within the time set therefor, upon which its franchise is conditional. The plaintiff will be irremediably damaged if the doubt were now resolved against it. The defendant, on the other hand, cannot be prejudiced by the postponement. For this reason the Court may well refuse to determine the question upon the present motion, and instead may properly

make a restraining order permitting the continuance of the work under the alleged franchise until the question may be tried in court according to the rules of evidence. Upon this ground, as well as upon the merits, the plaintiff's motion for a continuation, *pendente lite*, of the preliminary injunction, is granted."

The case came on for trial before Mr. Justice Fitzgerald in June, 1906, who concluded that:

1. "The plaintiff had acquired at the time of the beginning of this action, and now has, due legal power and lawful authority to construct and operate its tunnel and railroad."

2. "There was no warrant or authority in law for the attempted revocation of any of said licenses and permits, either for the use of explosives or for temporary buildings; and said licenses and permits were and are of full force and effect."

3. "*The time of the plaintiff to complete the construction of its tunnel will expire on the 31st day of December, 1906.*"

In his opinion Mr. Justice Fitzgerald said:

"The validity of plaintiff's incorporation under the provisions of the General Railroad Act of 1850, as affected by various subsequent statutes, particularly the prohibition of chapter 10, Laws of 1860 applicable only to the city of New York, the constitutionality of the Tunnel Act, chapter 582, Laws of 1880, the alleged failure of defendant in any event to comply with its provisions, the legality of the consents of the local authorities and of the abutting owners, the lapsing by expiration of time of the defendant's franchises and its failure to comply with statutory requirements in the matter of the change of route, were all sharply presented and definitely determined."

— when the matter was before Mr. Justice Blanchard. Accordingly a decision was rendered for the company.

As to the contention of the city that the railroad company had failed to obtain the consent of the dock department for the 300-foot strip referred to above, Mr. Justice Fitzgerald said:

"It is claimed that this land under water is within the exclusive control of the dock department, and that no action of the Board of Aldermen can confer any right of way or easement under this portion of the bed of the East river. \* \* \* This is a proposition not affecting the validity of plaintiff's charter, but challenging its right to construct its tunnel upon a portion of its designated route. It does not appear that any application for consent was made and refused, nor was the failure to obtain such consent made a ground for the revocation of the permits. There is some suggestion of acquiescence. If plaintiff becomes a trespasser it does so at its peril, and no adjudication now can deprive the city or the dock department of their remedies, while irreparable loss might result to the plaintiffs if it were, by the revocation of permits, prevented from prosecuting a work the failure to complete which within a short period of time might involve the forfeiture of its charter and the consequent loss of the vast sum of money already expended."

*The Case in the Appellate Division.*—The appeal from this judgment was argued in the Appellate Division in October, 1907, and the Appellate Division, by unanimous opinion, affirmed the judgment of Mr. Justice Fitzgerald. Although the case was not decided until 1907, it was begun in 1906, and therefore the court did not assume to decide these two questions:

1. The effect of the failure of the company to construct and operate its road by the prescribed time, namely, January 1, 1907.

2. The effect of the failure to get the consent of the dock department of the city of New York for a portion of its road as at present constructed. The Appellate Division did say, however:

"The articles of association were filed on the 30th of July, 1887; the company entered into a contract for the construction of its road in June, 1890; work was begun thereunder, and by July 30, 1892, upwards of 10 per cent of the capital had been expended. The time for completion had been extended by chapter 700 of the Laws of 1895; 647 of the Laws of 1901; 487 of the Laws of 1902; 597 of the Laws of 1903; to January 1, 1907. As this case was commenced in February,

## ORDERS OF THE COMMISSION ISSUED IN 1908. 355

1906, and tried in June of the same year, the time limit for completion had not expired."

As to the second question, the Appellate Division said:

"For the purpose of this suit it is unnecessary to decide where the power is lodged. The permits at bar were not revoked because the permission of the dock department had not been granted to pierce this strip of land under water."

*Direct Action Brought by the City.*—In February, 1907, an action was brought by the city of New York against the New York and Long Island Railroad Company, the substance of this action being that the corporate existence and powers of the railroad company ceased January 1, 1907, that its work since that time had been carried on without legal authority and that its franchises were forfeited and void. The city asked judgment permanently enjoining and restraining the construction and operation of the railroad. To this complaint the company demurred, and the demurrer was argued before Mr. Justice Davis, of the Supreme Court, in October, 1907.

Mr. Edward P. Bryan, president of the Interborough Rapid Transit Company, testified before the Commission upon August 20, 1907, that he was chairman of the board of trustees of the New York and Long Island Railroad Company. He also stated that the company ceased to have a board of directors about January 1, 1907, when the board became a board of trustees, "practically under the advice of our legal department." He further testified that all the corporate assets which, prior to January 1, 1907, were under the direction or control of the board of directors of the company, were then (August 20, 1907) under the direction and control of the board of trustees and that he signed himself, not as president of the company, but as chairman of the board of trustees.

Mr. Justice Davis, in his opinion handed down December 9, 1907, ruled that the demurrer put in by the company was not properly interposed. He said:

"The failure of the defendant to comply with the Railroad Law as to completion and operation of the railroad was *ipso facto* an extinction of the corporation, and it does not require the bringing of an action to dissolve the corporation (Matter of Brooklyn, Winfield & Newtown Ry., 72 N. Y. 245). And the so-called franchises mentioned in the complaint were immediately extinguished (see Brooklyn, Q. Co. & Sub. R. R., 185 N. Y. 185).

"It thus appears from the complaint that the action is brought against a defendant that has no existence. The defendant being dead in the sense referred to above there can be no pleading to the complaint on behalf of that defendant.

\* \* \*

"I do not agree with the demurrant's view that the property rights and franchises mentioned in the complaint survive the extinction of the defendant's corporate existence and pass to the directors as trustees for the benefit of those concerned, and that these trustees are the proper parties defendant. If this were so the trustees might take their own time to build the road and thus defeat the very purpose of the statute to insure a speedy completion of the work for public uses (Matter of Brooklyn, Q. Co. & Sub. R. R., 185 N. Y. 171, 185). \* \* \* My conclusion is that the demurrer is not properly interposed and has no standing in the case. The demurrer really admits that there is no defendant here. As a matter of fact, there is no action pending, nor was there at the time the demurrer was served. Submit decision and judgment in accordance with these views."

*Present Condition.*—Such was the situation of the litigation at the end of the year. The tunnel was almost if not quite completed, and it is stated that operation could be begun in a short time so far as physical conditions are concerned. Cars have actually been run through for purposes of inspection but not for public use. The stock of the New York and Long Island Railroad Company is practically all owned by the Interborough Rapid Transit Company, which has furnished the funds to build the line (see Mr. Bryan's evidence before the Commission in the Interborough-Metropolitan investigation). The same company owns practically all of the stock of the New York and Queens County Railway Company, the company that operates the street car lines in Long Island City and most of the borough of

356 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Queens. Thus the Interborough Company controls the subway in Manhattan, with which the Steinway tunnel would at present naturally connect; the Steinway tunnel itself, and also the surface lines in Queens, which are naturally the feeders of the tunnel. It would easily be possible within a short time to make an operating connection between the tunnel and the Queens surface lines. In Manhattan a transfer station certainly could be built and possibly an operating connection provided. But no proposition has been made to the Commission by any company looking to this end.

The following statement has been filed with the Commission of the expenditures of the Interborough Rapid Transit Company in connection with its acquisition of the stock, etc., of the New York and Long Island Railroad Company and the construction of the tunnel, including the estimates of the amounts required to complete the work by the chief engineer of the company:

Original cost to the Interborough Rapid Transit Company of franchises, etc. . . . .	\$402,035 17
Cost of real estate (see Schedule "A," hereto annexed) . . . . .	917,693 94
Cost of construction and equipment (see Schedule "B," hereto annexed) . . . . .	6,126,151 67

Total, exclusive of interest accrued. . . . .	\$7,445,880 78
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Interest at 4 per cent per annum to July 15, 1907:

On Interborough Rapid Transit Company's original investment . . . . .	\$54,490 05
On real estate purchases. . . . .	58,142 95

On loans and construction account:

Advances from the Interborough Rapid Transit Company to or for the account of the New York and Long Island Railroad Company. . . . .	114,499 19
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	227,132 19
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Grand total . . . . .	<u>\$7,673,012 97</u>
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If interest is computed at 5 per cent per annum, the cost is. . . . .	<u>\$7,729,796 01</u>
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If interest is computed at 6 per cent per annum, the cost is. . . . .	<u>\$7,786,579 05</u>
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Note.— We have certain claims against the Pennsylvania Railroad Company and others from which \$40,000 will be realized, in the judgment of the chief engineer; the plant, it is estimated, will bring about \$160,000; a total credit of \$200,000, to be deducted from the figures shown hereinabove.

Thereafter the Rapid Transit Act was amended so as to authorize the Commission, subject to the approval of the Board of Estimate and Apportionment, to purchase the Steinway Tunnel, and the Interborough Rapid Transit Company renewed its previous proposal that the city of New York should purchase the tunnel.

REPORT OF THE COMMITTEE OF THE WHOLE.

The proposal that the city of New York should purchase the Steinway tunnel first came before this Commission officially in February of this year, in the form of a letter from the Interborough Rapid Transit Company. But as the Commission had no authority at that time to make such an agreement as was proposed, the plan was not passed upon.

In the following weeks of the session, the Legislature passed an act amending the Rapid Transit Law by adding a new section, which was intended by those urging it to authorize this Commission, with the approval of the Board of Estimate

and Apportionment, to purchase for such price and upon such terms and conditions as may be agreed upon "any line or lines of railway already constructed or in process of construction of the character which might be constructed as a rapid transit railway." With like approval, this Commission may enter into a contract with any person, firm or corporation for the equipment, maintenance and operation of such railway for a term not exceeding twenty-five years, with a covenant for one renewal not exceeding twenty-five years. This contract must state terms and conditions as to rates of fare, character of service, and rental to be paid. This Commission, also, is directed to secure such consents from public authorities and property owners as are necessary to permit operation.

It should be noted that this act, although general in form, was intended to apply so far as known, only to the Steinway tunnel. This tunnel is placed in a class by itself, for every other tunnel or subway that is constructed under the direction of the Public Service Commission must be rented, if at all, for a sum sufficient to pay interest and sinking fund upon the cost of construction. The act passed last spring does not enlarge the powers of the Commission over all subways, but permits in this one case a rental to be fixed which might pay only a minor part of interest and sinking fund, or even no part at all.

#### PHYSICAL CONDITION OF TUNNEL.

After the passage of this law, the Interborough Rapid Transit Company renewed its proposal to sell the tunnel; but before stating the essential features of this proposal, it may be well to summarize the physical and legal status of the tunnel. As at present constructed, it begins at a loop at Forty-second street and Park avenue, Manhattan, running thence under Forty-second street, East river and Man-o'-War reef to Long Island City, and thence under Fourth street to its intersection with Van Alst avenue, where there is a terminal loop and an open cut approach to the surface. Except under Fourth street, Long Island City, where it is of the usual subway section, the tunnel consists of two single-track tubes. The grades of the main portion of the tunnel are, on the Manhattan side, 3 per cent; in the river section, 1.63 per cent; Long Island City side, 4.5 per cent; the latter grade extending for a distance of about 1,260 feet west of Vernon avenue. A steeper grade of 6.5 per cent occurs at the surface-approach cut at Van Alst avenue. This grade, as well as the radius of the terminal curve would necessitate the operation of motor cars only.

A thorough examination of the tunnel was made by Mr. Seaman, Chief Engineer to the Commission, who reported that it was in good physical condition, except for a few minor defects which could be remedied or were so unimportant as to be disregarded. Considerable work must yet be done, including provision for ventilation and drainage, completion of shafts, stations, track and lighting system, installation of cables and signal system, etc. Mr. Pegram, chief engineer to the company, estimates this work will cost \$310,000.

There are three stations on the route: (1st) in Manhattan between Lexington and Third avenues; (2d) in Long Island City at Jackson avenue, and (3d) in Long Island City at Van Alst avenue. The first is the largest and is at a depth of about sixty-five feet below the street surface. A double escalator is to be provided; the other stations are so near the surface that none will be necessary. The Lexington avenue station is too far east to connect with the Grand Central station of the present subway. In the opinion of Mr. Seaman, it might better have been located a block further west, so that one station would provide direct connections with the present Grand Central Station and also the station upon the proposed Broadway-Lexington avenue line. As at present constructed, every passenger coming through the tunnel who wishes to use the present subway in Fourth avenue must go to the street, walk two long blocks and descend again, consuming at least five minutes. If a direct connection were provided, as suggested, the change would not require over two minutes, and in bad weather the inconvenience eliminated thereby would be very considerable. To make this change an additional expenditure of \$300,000 will be required, according to Mr. Seaman.

The tunnel is designed for electric surface cars, equipped with a special overhead contact shoe. There is sufficient clearance for the largest cars now in use in the subway, but the radius of the end loops, fifty (50) feet, is so small that only single cars could be operated. The grades are so steep in places that only motor cars can be used; trailers could not be used as is done in the present subway. The tunnel was evidently intended for operation by the surface cars of the New York & Queens County Railroad Company's lines in Long Island City. It is practicable to introduce the Jackson avenue cars either by a connection on Van Alst avenue, or else by constructing a new connection at Jackson avenue and Fourth street. The Borden avenue cars may be introduced in the tunnel by constructing a new connection at Fourth street and Van Alst avenue, which would run over the Pennsylvania Railroad tunnels, as now being constructed.

In many respects the Steinway tunnel is well located to constitute a valuable adjunct of a future comprehensive subway system. It occupies a level below the present subway in Forty-second street and could be extended at some future time across the City to the North river and possibly south to the new Pennsylvania railroad station, or to connect with the Hudson and Manhattan subway in Sixth avenue. If a west side subway south of Forty-second street were built, many of the passengers from the north would proceed down-town by this route. The present east side subway in Fourth avenue would then be freed from its present congested traffic and could accommodate the passengers brought by the Steinway tunnel from Queens and the New York Central Railroad. It will pass under the proposed Lexington avenue subway and could be made to connect therewith. Practically all of the surface lines of the northwestern portion of Queens could be brought to Manhattan by this tunnel or made to connect therewith.

#### LEGAL SITUATION.

The legal status of the tunnel is set forth in full in the First Report of the Commission. It was originally begun by the New York and Long Island Railroad Company, incorporated in 1887. The stock of this company is now practically all owned by the Interborough Company, which has furnished most of the funds to build the line. The act under which the company was incorporated provided that unless the road was finished and put in operation within ten years from the filing of its articles of association (by July 30, 1897), its corporate life would end. If we accept the claim of the company that this time was extended by later legislation, the limiting date becomes January 1, 1907. As a matter of fact the tunnel was not finished and put in operation by that date, and, as the courts have decided, the corporate powers and existence of the company have ceased. The property of the company is now in the hands of the former directors as trustees, but they have no power to operate.

The City of New York brought suit some time ago, claiming that the company did not have the necessary franchises, permits and consents to authorize construction or operation. An agreed statement of facts has been prepared and probably this case will be presented to the Appellate Division very soon. Perhaps the company did have the necessary authority to operate, if the tunnel had been finished and in operation by January 1, 1907. But this authority is useless now so far as operation by the company or the trustees is concerned. If these rights are legal and sufficient — if no further grants are necessary — it is possible that the trustees could sell the property, including the franchises, to a company having the right to operate. These are legal questions not yet settled, but in any event operation could be brought about by new grants of authority.

#### TERMS OF PROPOSITION.

The proposal made by the Interborough Rapid Transit Company is in substance as follows:

1. The company is to transfer all its interest, title and control over the tunnel as above described, the franchise which it claims to have for the construction of the road and such real estate as will be necessary for its operation, to the City of New York.

2. The City of New York is to pay the "actual cost to Interborough Rapid Transit Company for construction, real estate necessary for rights of way, interest charges, etc., say \$7,239,476.50. The exact amount of real estate required will be a subject for adjustment and when determined on, its cost as well as the cost of all other items may be verified by an independent audit."

3. The company is to accept in payment City bonds, 4 per cent at par.

4. The City of New York is to enter into an operating contract with the New York & Queens County Railroad Company to operate the tunnel in connection with its lines in Queens for a period of twenty-five years.

The terms of this agreement are to be as follows:

5. Expenses of operation to be fixed at an arbitrary sum to represent the estimated cost.

6. One-half of this sum to be paid by the City, the balance by the company.

7. A single fare of five cents to be charged between Forty-second street and Fourth avenue, Manhattan, and any point on the line of the New York & Queens County Railway.

8. The City to receive all "local fares," which are to be estimated at twice the fares received at the two stations in Long Island City.

9. When the local fares so paid over shall have reimbursed the City for all amounts advanced for operating expenses, interest on City bonds, a sinking fund of 1 per cent per annum, and all arrears of interest and sinking fund, any surplus of local fares is to be divided equally between City and Company.

10. All through fares to be retained by the company.

#### ANALYSIS OF OFFER — FINANCE.

Considering these provisions in turn, the question at once arises: What amount must the city pay? The offer of the Interborough Company says "actual cost" as shown by "an independent audit" and suggests \$7,240,000 (to be exact \$7,239,476.50). To determine what has been spent, Mr. Weber, Chief Statistician of the Commission, was directed to make a careful examination of the books and vouchers. He reports that the company claims to have expended or incurred liabilities amounting to nearly \$8,000,000, divided as follows:

(a) Work and expenses incidental to construction of	
tunnel .....	\$5,745,972.22
Add advances to Degnon Contracting Company. ....	169,074.48
	<hr/>
	\$5,915,046.65
(b) Real Estate .....	884,903.63
Expenditures of an intangible nature:	
(c) Cost of property and franchises represented by	
Capital Stock and assignments of judgments. ....	\$374,976.05
(d) Legal expenses .....	62,450.04
(e) Advertising .....	2,231.08
(f) Interest on loans and advances.....	864,399.34
	<hr/>
	1,304,056.51
	<hr/>
(g) Liabilities unpaid at Sept. 30, 1908.....	\$8,104,006.79
	<hr/>
	491,510.19
	<hr/>
	\$8,595,516.98

With the aid of engineers, Mr. Weber analyzed these items in detail and reports that the propriety of including certain of them is open to question, as for example, certain large salaries, the allowances made for rush work in order to complete the tunnel before the expiration of the charter of the company (this was unsuccessful), payments for franchises to other than public authorities, legal expenses in furthering certain legislation, and purchases of real estate. How much should be deducted is, of course, a matter of conjecture, but apparently the company considers \$7,240,000 as the minimum figure for cost.

The annual cost to the City, using these two items as a basis, will be, according to the offer (see items 2, 3 and 9 above):

	On Basis of \$7,240,000 Cost.	On Basis of \$8,600,000 Cost.
A — Interest on bonds at 4%.....	\$289,600.00	\$344,000.00
B — Interest on cost to complete tunnel (\$310,000) .....	12,400.00	See note*
C — Interest on cost to rebuild station (\$300,000) ....	12,000.00	12,000.00
D — Sinking fund of 1% on above.....	78,500.00	89,000.00
 Total fixed charges.....	\$302,500.00	\$445,000.00
E — $\frac{1}{2}$ Operating cost — estimated at.....	35,000.00	35,000.00
 Total annual expense to City.....	\$427,500.00	\$480,000.00

Item E is the only one which has not been explained. In order to arrive at a fair figure, an estimate was made of the probable traffic through the tunnel. It will come from three sources: The first class will consist of those whose journey originates or ends within walking distance of the two stations in Long Island City and who wish to go to or from Manhattan. The second class will consist of those who ride over the lines of the New York & Queens Railway either before entering or after leaving the tunnel. The third class, of those who come from or are going to lines of transportation in Queens, whose cars do not run through the tunnel.

#### PRORABLE TRAFFIC ON QUEENS LINES.

It is probable that the second source of traffic will be by far the most important. Passengers upon the New York & Queens system may ride through without paying an extra fare or changing cars. This will be true of no other line, unless it makes a contract with the New York & Queens Company, which would appear and have, under the agreement proposed, exclusive rights of operation and control. Neither the Pennsylvania Railroad Company nor the Long Island Railroad Company will be likely to make such an agreement, for they will have their own tunnel delivering passengers at the Pennsylvania station in Manhattan. The Brooklyn Rapid Transit Company would not be likely to do so, for it has the free use of the Williamsburg and Brooklyn Bridges and can afford a more direct route to the lower portion of Manhattan for the portion of its traffic which originates in Queens than by the Steinway tunnel. Further, most of their patrons would doubtless prefer to go via the bridge because there would be no extra fare that way; but if they used the Steinway tunnel, another fare would probably have to be paid for a ride downtown in the subway. But if any arrangement were made for running cars from other lines, into the tunnel, the City would receive no additional revenue and would have to pay one-half the cost of operating these cars.

At present these are the only lines which run into Long Island City or approach it that are not controlled by the New York & Queens Company. If an independent company were to get a franchise, it might make some arrangement with the present company, but it would be at a decided disadvantage in bargaining, and it is more likely that no new company would attempt to obtain a franchise which would make it dependent upon the New York & Queens Company for an outlet. New companies are more likely to run lines over the Blackwell's Island Bridge and to tap areas adjacent thereto.

In estimating the probable traffic upon the New York & Queens system during the first year of operation, upon the assumption that the tunnel would be opened as soon as possible, three factors were considered. The first was the traffic during the year 1907-8, which was 18,621,355 fare passengers. The second was the growth during past years. From 1904-5 to 1905-6, the increase was 14 per cent; from 1905-6 to 1906-7, 6 per cent; from 1906-7 to 1907-8, 3 per cent. It is interesting to note that the rate of growth has decreased and not increased. It does not seem likely that the increase in the coming year due to natural developments alone would be over 10 to 15 per cent, even in view of the opening of the tunnel and

\* This item is included in \$8,600,000.

bridge. The third factor was the probability that the opening of the Steinway tunnel, with a through fare to Lexington avenue of five cents, would deflect to the New York & Queens system a number of passengers who have heretofore gone by the Brooklyn Rapid Transit lines or the Long Island Railroad. Probably neither would be affected to any large degree, partially for reasons above given and partially because the lines of the New York & Queens Company and those of either of the other two companies do not tap the same areas except to a limited degree.

*But not all of the passengers* who will ride upon the lines of the New York & Queens Company *will wish to use the Steinway tunnel.* From the total number there must be deducted the local riders in Queens, i. e., the passengers to and from Flushing, College Point, North Beach, Jamaica, Elmhurst, Astoria, Maspeth, Steinway, Corona, Ravenswood, Woodside and Long Island City, whose errands, business, shopping or pleasure will not bring them to Manhattan. Then there are the passengers who will continue to use the Astoria and the College Point ferries far uptown, because more convenient. The opening of the Blackwell's Island Bridge, with surface cars operating to and from Manhattan, will cause a considerable number to use this means of reaching Manhattan. Last of all, there is the attraction of the Thirty-fourth Street Ferry, not only to those who will find it more convenient at either end or both ends, but to those who prefer a three-cent fare by ferry to a five-cent fare by tunnel.

#### LOCAL TRAFFIC.

The local traffic, i. e., the number of passengers who will enter or depart from the two stations upon the tunnel in Queens, will not be large, as distinguished from the through travel brought to the tunnel by the New York & Queens County surface cars. The nearest station upon the Long Island Railroad is a quarter of a mile from the Jackson Avenue station of the tunnel, and that station is at the Thirty-fourth Street ferry. It is not likely that a very large number will walk that distance to take the tunnel to Forty-second street, especially when it will mean a five-cent fare as compared with a three-cent fare or less by commutation rate, and especially when the ferry is immediately at hand. A number may walk from one of the lines of the Brooklyn Rapid Transit Company, but not many.

There will also be those who will live, shop, visit or do business within walking distance of the two tunnel stations. But this area will be small. Everyone will take a surface car whenever possible, for why should he walk to a station when the fare will be no less than if he boards a car and rides directly through the tunnel. The Van Alst Avenue station will do a small business because it is reached by the loop cars only, and not by those that will run out over the tracks in the streets. Nearly everyone who might find this station convenient otherwise will take a car before it enters the tunnel because of the greater number of such cars and because by so doing he may avoid a wait at the Van Alst station. Then, there will be those who will find the ferry more convenient than the tunnel. Further, the ferry fare is three cents, the tunnel fare is five cents. Thus the financial inducements to take the tube will be lacking.

All things considered, it does not seem reasonable to assume that there would be local fares, as defined by the proposal, in excess of 1,500,000 during the first year, and certainly not more than 2,000,000. The letter of the Interborough Company says that the number will be not less than 5,000,000, but gives no basis for this estimate. In the course of the general investigation into the transit situation in this city, it appeared that a statement submitted at a meeting of the Executive Committee of the Interborough Company by the chairman, placed the figure at 1,000,000. This was upon July 24, 1907, a few months prior to the date of the letter to the Commission.

#### OPERATING EXPENSES.

In computing the operating expenses of the tunnel, it has been estimated that 13,000,000 passengers would be carried. This is probably not excessive. In the statement above referred to, the number was estimated at 11,000,000 approximately, but perhaps that was intended to refer to an earlier period. If 13,000,000 is too

small, the annual cost to the City as above estimated must be increased. If it is incorrect at all, it is probably too small rather than too large. The estimated cost of operation has been fixed at \$70,000, which is probably not too high. Dividing this amount equally between the City and the Company, the amount to be paid by the City is found to be \$35,000.

#### RECEIPTS.

Having considered the cost to the City for the first year of operation and the probable traffic, one is now able to determine the probable income to the City from "local fares" according to paragraphs 7 and 8 of the proposal.

	On Basis of \$7,240,000.	On Basis of \$8,000,000.
Total annual expense to city.....	\$427,500	\$480,000
Receipts at 5 cents per "local fare" (1,500,000) .....	75,000	75,000
Deficit .....	\$352,500	\$405,000

If the "local fares" should be 2,000,000 the deficits would become respectively \$327,500 and \$380,000. Even the estimate of the company that 5,000,000 local passengers would be carried would leave a deficit of \$177,500 or \$230,000.

It is clearly not fair to judge a plan financially by one year's probable results. This brings us to the question: Will the deficit decrease or increase from year to year? It is quite apparent that interest and sinking fund charges must go on at the same amount until the bonds are paid off by the accumulations of the sinking fund. There is nothing to indicate that operating expenses will decrease, for the traffic through the tunnel ought to increase from year to year. This must lead ordinarily to larger gross expenses and a heavier burden upon the City, although the cost per passenger might decrease. The total annual expense will increase, therefore.

But will this increase be equalled or exceeded by any increase in receipts? The answer depends upon the number of "local fares." Unless some change is made in traffic arrangements, this number is not likely to be increased greatly. The city will gain nothing from any increase on the lines of the New York and Queens Company. Upon the contrary, for every passenger that is added from beyond Van Alst avenue, the city will have to pay something, viz., one-half of the cost of carrying him through the tunnel. It is true that the city gets all from every "local" passenger added, but "local fares" must grow to be a large percentage of the total before the city will be able to eliminate a deficit. In view of the relative size of the two areas from which the local and through passengers are drawn, the probable growth in population and the large deficit to begin with, there seems to be little promise that under the arrangement proposed, the city would be able for many years to come, if ever, to make both ends meet under the contract proposed. It would require some 10,000,000 local fares out of a total number of 20,000,000 or 30,000,000 in order to make receipts equal to or exceed expenses.

#### THE QUEENSBORO BRIDGE.

The sum and substance of the offer of the Interborough Company is that the city shall subsidize the New York and Queens Company, and by such subsidy enable the company to carry people to Forty-second street, Manhattan, for five cents. Doubtless there are other companies that will be glad to lower fares if a subsidy from the city will be forthcoming. Some persons attempt to justify this subsidy upon the ground that the city has already adopted this policy as to other boroughs. They cite the use of the Williamsburgh and Brooklyn Bridges by the Brooklyn Rapid Transit Company practically free of charge, all of the fixed charges and maintenance expenses being borne by the city. They cite the Staten Island ferry, which is said to have a deficit of about \$750,000 during the past year, and also the Thirty-ninth street ferry with a deficit of \$250,000. Upon these facts they base a claim that the borough of Queens is entitled to have the Steinway tunnel purchased and operated at public expense.

But they have forgotten several important facts. The city has already provided a big and expensive bridge as an outlet for Queens, which has or will cost between \$15,000,000 and \$20,000,000, and the city will have to pay out of the general fund an annual interest charge of from \$600,000 to \$800,000 and also operating expenses. A large portion of Queens is tributary to the other bridges and derives benefit therefrom. The present subway to the Bronx and Brooklyn is self-supporting, and under the Rapid Transit Law, every other subway must be rented, if at all, for a sum sufficient to pay interest upon the cost and a sinking fund charge. It may be true that the Steinway tunnel would contribute more to the development of Queens than a bridge, and that \$7,000,000 expended thereon would do more good than \$15,000,000 upon a bridge, but the city has the bridge, the money can not be recalled, and the question is: Shall \$7,000,000 or \$8,000,000 more be spent under the offer now before the Commission?

In this connection, it should be noted that the approach to the Queensboro Bridge comes to grade near Jackson avenue within four-fifths of a mile from the entrance to the Steinway tunnel; thus, nearly all of the cars of the New York and Queens system must pass this approach in order to reach the tunnel. In other words, the area that is naturally tributary to the tunnel and to the tunnel only is a very small part of Queens or even of the northerly portion of Queens.

The Queensboro Bridge has some features of advantage over the tunnel. By means of the bridge, cars may pass from several lines in Manhattan into Queens and from several lines, old and new, in Queens into Manhattan. The Manhattan elevated roads may also be extended into Queens and beyond the terminal if necessary. Thus, every one from Queens, upon any of the lines tributary to the tunnel and upon others, would be able to get from Queens to any part of Manhattan for ten cents, and many would be obliged to pay only five cents. The Steinway tunnel cannot do more; nor as much for many. The only advantage that city purchase of the tunnel would give would be the opportunity to those on the lines of the New York and Queens Company only to reach Forty-second street and Lexington avenue, Manhattan — one point — for five cents. If these passengers were to go to any point not easily reached by walking, they would have to pay five cents more or even ten cents more in certain instances. Those who would go via the Queensboro Bridge would reach a number of points in Manhattan along Fifty-ninth street for five cents and could reach practically any point north or south for another fare. Of course, either route would mean a ten-cent fare to the vast majority of Queens people, but the number who would pay ten cents via the tunnel would probably not be appreciably less than those paying ten cents via the bridge. It cannot be said that the tunnel is the only way of bringing residents of Queens into Manhattan for a five-cent fare. The bridge may do as much and perhaps more to open up the vacant areas in Queens as the tunnel alone.

#### THE RELATION OF SUBWAYS.

The city is face to face with a tremendous problem. The need for additional subways is imperative. The funds of the city are limited and are not sufficient at this moment to build all the lines that ought to be constructed. It is admitted that there are subways other than the Steinway tunnel that would be of greater value to the city and that would be self-supporting. As it is impossible at present to build those that will not be self-supporting and also those that will be, is it not wiser to spend what money there is available upon the latter than upon the former? If the present margin is spent upon self-sustaining subways, the operation of the proposed amendment to the State Constitution exempting from the debt limit bonds for revenue producing enterprises will provide funds for subways that are not so clearly profitable. But if the process is reversed and non-self-sustaining subways are built first, the constitutional amendment will be inoperative and the construction of profitable subways with city money will be impossible.

Further, if some subways are to be built and owned by private companies, should the city select for the investment of public funds those that are profitable or those that seem likely to produce a deficit? If companies are to come in, ought they not to be required to take the lean with the fat and not be allowed to

unload upon the city the unprofitable sections of the lines and keep the desirable portions? No proposition has been made to the Commission that the tunnel from the Battery to the Atlantic avenue station should be taken back by the city. Why then should the public be asked to pay for the Steinway tunnel which seems to have been undertaken without due foresight? Does any one suppose that if the company expected to make a profit from it, they would be anxious to sell it to the city?

Yet, it might be wise for the city to purchase the Steinway tunnel, if funds were available without the necessity of taking money from more profitable lines and lines that are more urgently needed. This last point might be waived, if the Commission were assured that the city would be freed from any possibility of a large annual deficit from the start or even after a few years. If the Interborough Company were to make a proposition that the terms of their present operating contract with the city should be extended to the Steinway tunnel, such an offer, or *indeed any offer that will be made*, will be given most careful consideration. Under the present offer, because of its peculiar provisions, the city could afford to give only a small amount, and still have any reasonable expectation that even after several years, the receipts would be sufficient to pay the expenses called for by the proposal.

#### INCREASE IN LAND VALUES.

In the letter of Interborough Company, the statement is made that the increase in taxable values in the borough of Queens has been \$140,000,000 in the last three years, and that on the basis of fifteen mills per \$100 of valuation, the increase in income to the city has been \$2,100,000. It is also stated that values will still further increase when the tunnel is opened and a five-cent fare established through to Lexington avenue, Manhattan. The conclusion which has been drawn from these statements is that the deficit from the operation of the tunnel would be more than repaid by the increased receipts from taxation.

There is little doubt that every increase in transportation facilities does increase the value of the real estate so benefited. But the increase in values in Queens is due to several factors. First and foremost, property is now assessed more nearly at its real value than formerly. This alone has caused a big increase. Second, property in suburban districts increases in value, even though transportation facilities remain stationary. The very growth of the city puts up values. Third, the erection of the Queensboro Bridge has raised values. Fourth, the Pennsylvania tunnels have had a similar effect. It is to be remembered also that the territory tributary to the Steinway tunnel is only a part of the borough of Queens. A very much larger portion will not be affected at all. It is probably true, however, that the opening of the Steinway tunnel and the inauguration of a five-cent fare to Manhattan would be, and perhaps has been, the cause of an increase in the value of property much in excess of the cost of the tunnel. But most of the increase would go to the owners; the city would get only a small portion of it through taxation. Further, even that small portion has to be divided among many city departments. Expenditures for street lighting, cleaning and paving, school parks, police, fire protection, health, charities and the many governmental purposes grow even faster than population and seem to consume every fresh contribution made through taxation by the increased values in real estate. The multiplication of values within the past century has been enormous, but expenditures for governmental purposes seem to have kept pace with them. Even with the growth in Queens referred to above, this borough still contributes less to the city of New York than is expended within the borough from the city's fund. If the proposal of the Interborough Company were accepted, the contribution made by the taxpayers outside of Queens to the support of Queens would have to be still further increased, and this increase would be in addition to the \$800,000 to be contributed on account of the Queensboro Bridge.

#### OTHER FEATURES.

There are other features of the proposition by the Interborough Company that are not satisfactory. It gives no assurance that the New York and Queens

Company would continue to carry passengers from any point on their system as extended in the future through to Manhattan for five cents. Yet the principal reason why the city is urged to buy the tunnel is that by so doing, thus indirectly granting a subsidy to the company, a five-cent fare may be secured instead of a seven or eight-cent fare. As the proposition now stands, a foreclosure might bring the lines of the New York and Queens Company into the hands of parties not bound by the proposed contract with the city. The result might easily be an increase in fares, and thus the very object prevented for which the tunnel was purchased.

The city should also have the right to allow the other railroads to run their cars through the tunnel, but the proposed form of contract makes no such provision. Other transportation lines may be built in Queens, and the city should have the right to allow them access to the tunnel. How can any one justify a contract that provides for the leasing of public property for the exclusive use of one corporation when the price paid is not sufficient to pay fixed charges?

The method of computing the small rental to be paid to the city might be productive of much litigation. A method of evasion has been pointed out, and if passengers were to transfer at any one of the stations from the lines or cars of the New York and Queens Company the question might easily arise, whether they were local or through passengers.

#### ALTERNATIVES.

In considering this proposition, the Commission has given much attention to an alternative solution. There are several ways by which the tunnel could be put into operation in the near future.

1. It has been stated that any plan by which a large annual deficit will not be placed upon the city, at least not after a few years, will be given careful consideration.

2. If the opening of the tunnel has been productive of such large increases in the value of real estate, why should not such real estate bear the cost of the tunnel, or part of it, at least, if the city buys the tunnel? If the statements frequently made are correct, an assessment of the cost would not consume by a large percentage the increase in values which the tunnel has *already* caused. The property holders would still retain a profit. This theory is in common practice, for many public improvements are now paid by the property benefited.

3. Whether there is a valid franchise for operation now in the hands of the directors of the New York and Long Island Company is a question to be decided by the courts, and it is now before them. If the directors have the necessary franchises, permits and consents, they may not be able to exercise the right to operate themselves, but they probably could transfer to another company. If they do not have sufficient authority it could be granted to some company to which the physical property could also be transferred. If there is anything in the present law that interferes in any way, an attempt might have been made last winter, and can be made this winter, to have such interference removed by legislation.

4. It has been, and still is, possible for the Board of Estimate and Apportionment, subject to the general statutory provisions, to grant a franchise for a tunnel railroad to a private company. Such a franchise may be made to run for fifty years with a renewal for twenty-five years — the term of the lease of the present subway.

If the company prefers to litigate its present claim to a perpetual franchise, and allow its property to lie idle meanwhile, it doubtless has that right. But if it desires to have the tunnel put in operation, there are at least four ways in which it may be done. *There is no insuperable difficulty to private operation of the Steinway tunnel*, and there has been none; it could be put in operation in a few months under the present law or under new legislation. The company built the tunnel; the city is not responsible for the present situation; it is incumbent upon the company, and not upon the city, to see that the tunnel is put in operation.

**SUMMARY.**

The Commission has no proposition before it other than the letter of the Interborough Company which is unsatisfactory. Certain questions were put to the officials of the company, with a view to ascertaining whether the proposal would be modified or another plan submitted; but the company refused to answer these questions and the Commission must act upon the only proposal now before it, which it disapproves for the reasons given above, which may be summarized as follows:

1. The city would be burdened with an annual deficit, including sinking fund charges, estimated at \$350,000, for the first year of operation, and there is no hope that the city would be able within very many years to make receipts equal expenditures.
2. The city has erected the Queensboro Bridge at a cost of \$15,000,000 to \$20,000,000, which will impose upon the whole city, not Queens alone, an annual charge amounting to \$800,000 or upwards. This bridge will serve much the same purpose as the tunnel, and in some directions, has a greater usefulness. However, it has been built; the city is not yet committed to an expenditure of \$7,000,000 for the tunnel.
3. The Steinway tunnel admittedly will not be self-sustaining. The purchase of this nonself-sustaining line first will make it much more difficult, and perhaps impossible, to build either profitable or development subways with city money.
4. The city should not purchase from companies the nonprofitable lines and leave the profitable lines in their hands. The two should go together, the latter helping to carry the former.
5. The increase in land values which might result from the opening of the tunnel, or have already resulted from the probability of its opening, would probably not leave any considerable sum to offset the deficit on operation after the fresh demands for governmental expenditures have been satisfied out of receipts from increased taxation. The property holders reap most of the benefit.
6. There is no adequate assurance that a five-cent fare would be secured permanently, even if the city were to purchase the tunnel.
7. The New York and Queens Company is given the exclusive right to use public property at a sum not sufficient to pay fixed charges.
8. The method of computing the rental is too indefinite.
9. There are several other solutions of the problem, by which the tunnel could be put to immediate use or within the near future:
  - a. A franchise could be granted by the city authorities to a private company as the law now stands.
  - b. If the present statutes are not satisfactory, an amendment allowing private operation could have been pressed last winter in the Legislature and may be this year.
  - c. A tunnel franchise for fifty years with a renewal for twenty-five years can be granted by the Board of Estimate immediately and could have been granted at any time during many years.
  - d. The cost of the tunnel might be met by special assessment upon the property benefited.

It is doubtless unnecessary to add that the Commission desires that the Steinway tunnel be put into operation at the earliest possible moment and that any reasonable proposal which would require an action by this Commission to achieve this result will be given very careful consideration by this Commission.

BASSETT, C.:—My reasons for voting not to accept the proposal of the owners of the Steinway tunnel are that there is no provision for assuring the continuation of five cents fare from the various parts of the Borough of Queens to the Grand Central station; that the proposal contemplates the exclusive use of the tunnel by the New York and Queens County Railway Company; that the method outlined for compensating the city is for the city to retain tunnel fares and the company retain all others instead of the city receiving a fixed sum for each passenger or car using the tunnel, and that some of the items included in the cost of the tunnel should be stricken out.

The other reasons given in the report, although helping to illustrate the situation, are not in my mind controlling on the question of whether the city should buy and obtain the great advantages to Queens that would follow. The Queensboro Bridge means five cents fare from Queens to Manhattan and five cents more to any traffic center of Manhattan. Non-purchase means either eight or ten cents fare to the Grand Central station. Purchase by the city on proper terms means the benefit of a five-cent fare between the Grand Central station and an immense undeveloped area lying only half as far away as the densely populated districts to the north. This would still mean five cents extra to those who desired to ride further than Grand Central station.

The unsymmetrical development of the city is uneconomical and by causing long hauls makes transportation expensive. In the long run the city as a whole pays the loss. The operation of every non-sustaining subway and elevated branch now in existence is indirectly a subsidizing by the city of the locality benefited. This is because the city compels the companies to make the short hauls pay for the loss on the long hauls.

The right policy is to make the city grow round instead of long. A circle comprises the greatest area with the shortest distances to the center. I know of no way that the city could secure a better return for money spent in properly housing its population than to secure quick and cheap transportation to Queens county. It is not generally known that there are more acres of land in the borough of Queens within ten miles of the Grand Central station than in any other borough not excepting Manhattan itself. The benefit of a plan giving five cents fare to Queens would be spread out over an immense area traversed by a network of surface lines instead of a single narrow strip benefited by a subway. Furthermore, a most important consideration is the manner in which this tunnel can be made available in the future comprehensive subway system of the city so that the highly remunerative traffic of lower New York could help to support the less remunerative portion under the East river and in Queens, the same as now the southerly portion of the Manhattan subway supports the less remunerative branches to the far north.

## CASE No. 1029.

December 31, 1908.

*Resolved*, That the proposition offered by the Interborough Rapid Transit Company under date of February 27th, 1908, for the purchase by the city of the tunnel railroad of the New York and Long Island Railroad Company, extending from Forty-second street and Fourth avenue, in the borough of Manhattan, under Forty-second street to the East river and under the East river and private property to Fourth street, Long Island City, and under Fourth street to East avenue, is hereby declined.

## SAFETY PRECAUTIONS AND DEVICES.

**Brooklyn Union Elevated Railroad Company.—Gates at Fresh Pond road on Lutheran cemetery line.**

In the Matter  
of

Regulations, practices and service of the BROOKLYN UNION ELEVATED RAILROAD COMPANY.

"Gates at Fresh Pond road on Lutheran Cemetery line."

EXTENSION ORDER  
No. 263.  
February 14, 1908.

An order of the Commission, No. 153, having been made herein on the 11th day of December, 1907, directing the Brooklyn Union Elevated Railroad Company to

complete the gates in course of construction at the crossing of its Lutheran Cemetery line at Fresh Pond road and to put said gates in actual operation on or before the 10th day of February, 1908, and the said company having applied in writing on February 11th, 1908, for an extension of such time,

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to complete and put in operation the gates above mentioned be, and the same hereby is, extended to and including the 20th day of February, 1908.

## Central Park, North and East River Railroad Company.— Guard rails on horse cars used on the "Belt Line."

Hearing Order No. 668.  
Hearing Order No. 694.  
Final Order No. 709.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvement in and addition to the service and equipment of the CENTRAL PARK, NORTH AND EAST RIVER RAILROAD COMPANY in respect to guard rails on horse cars.

ORDER FOR  
HEARING No. 668.  
August 10, 1908.

*It is hereby ordered*, That a hearing be had on the 14th day of August, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Central Park, North and East River Railroad Company in respect to transportation of persons in the First District are unreasonable, unsafe, improper or inadequate, as hereinafter set forth, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in the regulations, practices, equipment, appliances and service of the said company as hereinafter set forth are such as will be reasonable, safe, adequate and proper and ought reasonably to be made in order to promote the safety and convenience of the public and employees of the railroad, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

Whether the following changes, improvements and additions should be put into effect:

1. That the Central Park, North and East River Railroad Company install, maintain and operate on every horse car in use suitable guard rails so arranged as to prevent passengers entering or leaving the car except on one side at any given time.

2. That the Central Park, North and East River Railroad Company be required to enforce a rule requiring passengers to enter or leave its horse cars only on the right-hand side.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the Central Park, North and East River Railroad Company be given at least five days' notice of such hearing, by service upon it either personally or by mail, of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held August 14th.

ORDER No. 694.  
August 25, 1908.

Whereas, heretofore and on the 7th day of August, 1908, Order No. 668 was made and served upon the Central Park, North and East River Railroad Company to bring on for hearing the following matters:

1. Whether said railroad company should be required to install, maintain and operate on every horse car in use suitable guard rails so arranged as to prevent passengers entering or leaving the car except on one side at any given time; and

**2. Whether said railroad company should be required to enforce a rule requiring passengers to enter or leave its horse cars only on the right-hand side; and**

Whereas, upon a hearing duly had in said matter it appeared that the horse cars mentioned were the property of the Metropolitan Street Railway Company, of which Adrian H. Joline and Douglas Robinson are receivers, and that said cars are leased to and operated by the Central Park, North and East River Railroad Company under an agreement by the terms of which the said company assumes no liability for changes in or additions to said cars, and that any final order made as a result of said proceeding might therefore affect said Metropolitan Street Railway Company and its receivers; and

Whereas, said proceeding was duly adjourned to the 27th day of August, 1908, at 2:30 P. M., for the purpose of enabling the Commission to bring in said Metropolitan Street Railway Company and its receivers as parties to said proceeding;

*Now, therefore, resolved,* That said Metropolitan Street Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, be given at least one day's notice of said adjourned date of said proceeding by service on them and each of them of a certified copy of this resolution, and that said proceeding be continued on and after this date in the same manner and to the same effect as if said original Order No. 668 had been directed to and served upon the said Metropolitan Street Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company.

Hearings were held August 14th, 21st and 27th.

The following final order was issued:

**FINAL ORDER No. 709.**

September 1, 1908.

This matter coming on upon the report of the hearing had herein on the 14th day of August, 1908, the 21st day of August, 1908, and the 27th day of August, 1908; and it appearing that said hearing was had by and before the Commission, pursuant to Hearing Order No. 668, issued upon motion of the Commission on August 7th, 1908, and returnable on the 14th day of August, 1908; and it appearing that said order was duly served upon said Central Park, North and East River Railroad Company on the 10th day of August, 1908; and it appearing that said hearing was had by and before the Commission on the matters embraced in said Hearing Order No. 668, on the aforesaid dates, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., acting counsel, appearing for the Commission, and A. H. Vanderpool, Esq., attorney, appearing for said railroad company; and it having been made to appear after the proceedings on said hearing that the equipment and service of said Central Park, North and East River Railroad Company are unsafe, improper and inadequate in that the open horse cars operated by said company upon its line known as the "belt line," in the borough of Manhattan, city and State of New York, are not equipped with guard rails and no guard rails are in use on said cars, and passengers are permitted to enter or leave the cars on both sides thereof; and that it would be just, reasonable and proper to require said Company not to operate on said line any open horse cars save those equipped with such guard rails and to use such rails on said cars in such a way as to prevent passengers entering or leaving the cars except on one side, at any given time, and to make and enforce a rule requiring passengers to enter or leave its horse cars only on the right hand side; and it having been made to appear that it would be reasonable to require that such equipment and service should be used and maintained and such rule enforced by said company on and after the 1st day of November, 1908, and until further order of the Commission,

Now on motion of George S. Coleman, Esq., counsel to the Commission, it is,

*Ordered,* (1) That said Central Park, North and East River Railroad Company be and it hereby is directed and required

(a) Not to use and operate upon its line known as the "belt line," in the borough of Manhattan, city and State of New York, any open horse cars save those which are equipped with guard rails, so arranged as to prevent passengers entering or leaving the cars except on one side, at any given time; and

(b) To make and enforce a rule requiring passengers to enter or leave its horse cars on said line only on the right hand side.

(2) It is further ordered, That this order shall take effect on November 1, 1908, and shall continue in force thereafter until such time as the Public Service Commission for the First District shall otherwise order.

(3) It is further ordered, That said Central Park, North and East River Railroad Company notify the Public Service Commission for the First District within five days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

**Interborough Rapid Transit Company.—Tools for use in case of accident.**

Opinion of Commissioner Eustis.  
Dismissal order 232.

\*[It is inadvisable to require tools for use in case of accident on cars of the subway.

Subdivision 6 of section 40 of the Railroad Law applies only to steam railroads.]

\* See footnote, page 9.

complete the gates in course of construction at the crossing of its Lutheran Cemetery line at Fresh Pond road and to put said gates in actual operation on or before the 10th day of February, 1908, and the said company having applied in writing on February 11th, 1908, for an extension of such time,

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to complete and put in operation the gates above mentioned be, and the same hereby is, extended to and including the 20th day of February, 1908.

**Central Park, North and East River Railroad Company.—**

Guard rails on horse cars used on the "Belt Line."

Hearing Order No. 668.

Hearing Order No. 694.

Final Order No. 709.

In the Matter  
of the

Hearing on the motion of the Commission on  
the question of improvement in and addition to  
the service and equipment of the CENTRAL  
PARK, NORTH AND EAST RIVER RAILROAD  
COMPANY in respect to guard rails on horse  
cars.

ORDER FOR  
HEARING No. 668.  
August 10, 1908.

*It is hereby ordered*, That a hearing be had on the 14th day of August, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Central Park, North and East River Railroad Company in respect to transportation of persons in the First District are unreasonable, unsafe, improper or inadequate, as hereinafter set forth, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in the regulations, practices, equipment, appliances and service of the said company as hereinafter set forth are such as will be reasonable, safe, adequate and proper and ought reasonably to be made in order to promote the safety and convenience of the public and employees of the railroad, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

Whether the following changes, improvements and additions should be put into effect:

1. That the Central Park, North and East River Railroad Company install, maintain and operate on every horse car in use suitable guard rails so arranged as to prevent passengers entering or leaving the car except on one side at any given time.

2. That the Central Park, North and East River Railroad Company be required to enforce a rule requiring passengers to enter or leave its horse cars only on the right-hand side.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the Central Park, North and East River Railroad Company be given at least five days' notice of such hearing, by service upon it either personally or by mail, of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held August 14th.

ORDER No. 694.

August 25, 1908.

Whereas, heretofore and on the 7th day of August, 1908, Order No. 668 was made and served upon the Central Park, North and East River Railroad Company to bring on for hearing the following matters:

1. Whether said railroad company should be required to install, maintain and operate on every horse car in use suitable guard rails so arranged as to prevent passengers entering or leaving the car except on one side at any given time; and

**2.** Whether said railroad company should be required to enforce a rule requiring passengers to enter or leave its horse cars only on the right-hand side; and

Whereas, upon a hearing duly had in said matter it appeared that the horse cars mentioned were the property of the Metropolitan Street Railway Company, of which Adrian H. Joline and Douglas Robinson are receivers, and that said cars are leased to and operated by the Central Park, North and East River Railroad Company under an agreement by the terms of which the said company assumes no liability for changes in or addititious to said cars, and that any final order made as a result of said proceeding might therefore affect said Metropolitan Street Railway Company and its receivers; and

Whereas, said proceeding was duly adjourned to the 27th day of August, 1908, at 2:30 P. M., for the purpose of enabling the Commission to bring in said Metropolitan Street Railway Company and its receivers as parties to said proceeding;

*Now, therefore, resolved,* That said Metropolitan Street Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, be given at least one day's notice of said adjourned date of said proceeding by service on them and each of them of a certified copy of this resolution, and that said proceeding be continued on and after this date in the same manner and to the same effect as if said original Order No. 668 had been directed to and served upon the said Metropolitan Street Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company.

Hearings were held August 14th, 21st and 27th.

The following final order was issued:

#### FINAL ORDER No. 709.

September 1, 1908.

This matter coming on upon the report of the hearing had herein on the 14th day of August, 1908, the 21st day of August, 1908, and the 27th day of August, 1908; and it appearing that said hearing was had by and before the Commission, pursuant to Hearing Order No. 668, issued upon motion of the Commission on August 7th, 1908, and returnable on the 14th day of August, 1908; and it appearing that said order was duly served upon said Central Park, North and East River Railroad Company on the 10th day of August, 1908; and it appearing that said hearing was had by and before the Commission on the matters embraced in said Hearing Order No. 668, on the aforesaid dates, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., acting counsel, appearing for the Commission, and A. H. Vanderpool, Esq., attorney, appearing for said railroad company; and it having been made to appear after the proceedings on said hearing that the equipment and service of said Central Park, North and East River Railroad Company are unsafe, improper and inadequate in that the open horse cars operated by said company upon its line known as the "belt line," in the borough of Manhattan, city and State of New York, are not equipped with guard rails and no guard rails are in use on said cars, and passengers are permitted to enter or leave the cars on both sides thereof; and that it would be just, reasonable and proper to require said Company not to operate on said line any open horse cars save those equipped with such guard rails and to use such rails on said cars in such a way as to prevent passengers entering or leaving the cars except on one side, at any given time, and to make and enforce a rule requiring passengers to enter or leave its horse cars only on the right hand side; and it having been made to appear that it would be reasonable to require that such equipment and service should be used and maintained and such rule enforced by said company on and after the 1st day of November, 1908, and until further order of the Commission,

Now on motion of George S. Coleman, Esq., counsel to the Commission, it is,

*Ordered,* (1) That said Central Park, North and East River Railroad Company be and it hereby is directed and required

(a) Not to use and operate upon its line known as the "belt line," in the borough of Manhattan, city and State of New York, any open horse cars save those which are equipped with guard rails, so arranged as to prevent passengers entering or leaving the cars except on one side, at any given time; and

(b) To make and enforce a rule requiring passengers to enter or leave its horse cars on said line only on the right hand side.

(2) *It is further ordered,* That this order shall take effect on November 1, 1908, and shall continue in force thereafter until such time as the Public Service Commission for the First District shall otherwise order.

(3) *It is further ordered,* That said Central Park, North and East River Railroad Company notify the Public Service Commission for the First District within five days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

**Interborough Rapid Transit Company.— Tools for use in case of accident.**

Opinion of Commissioner Eustis.  
Dismissal order 232.

\*[It is inadvisable to require tools for use in case of accident on cars of the subway.]

Subdivision 6 of section 49 of the Railroad Law applies only to steam railroads.]

\* See footnote, page 9.

**OPINION OF COMMISSION.**  
(Adopted January 31, 1908.)

**COMMISSIONER EUSTIS:**—

The undersigned, to whom was referred the complaint against the Interborough Rapid Transit Company for the lack of tools for use in case of accident on the cars of the subway, begs to report as follows:

This hearing was given to ascertain whether the Interborough Company were complying with the law in running their cars without a kit of tools in each car, as provided in subdivision 6 of section 49 of the Railroad Law, and also whether they were complying with the terms of their contract with the city, which required them to operate the railroad carefully and skillfully according to the highest known standards of railway operation.

It appeared upon the hearing that the railway company maintained complete wrecking outfits, consisting of rerailing, frogs, jacks, chains, block and fall, wrenches, bars, wedges, etc., at eight different stations along the main line at six of the stations on the Broadway line north of One Hundredth street, and at six of the stations on the Lenox avenue line north of One Hundred and Tenth street, and that also at every station emergency tool kits were contained, such as hand-saws, hack-saws, axes, chisels, bars, wrenches, pliers, etc., and that in the judgment of the management of the railroad, the tools provided at such stations would be far safer and better for use in the case of any accident than would be the case if tools were carried in the cars. I am of the opinion that they are correct in their judgment, in view of the fact that during the crowded rush hours it would be impossible to handle the tools in any of their cars even if they were there, and better service could be secured with the tools if they were brought from a nearby station and used by experienced persons. It must not be forgotten that many of the cars in use on this road are of steel construction, and the tools are of steel, and there is grave danger from the live third rail, especially if such tools were handled by inexperienced persons.

It is my opinion that subdivision 6 of section 49 of the Railroad Law was not intended to apply to an electric city railroad, but to steam railroads.

I would, therefore, recommend that the complaint be dismissed.

Thereupon the following dismissal order was issued:

In the Matter  
of the  
Hearing on the motion of the Commission on the  
question of an improvement in and addition to the  
property or devices of the INTERBOROUGH  
RAPID TRANSIT COMPANY.

Tools for use in case of accident.

Under Order for Hearing No. 162.

ORDER No. 232.  
January 31, 1908.

This matter coming on upon the report of the hearing had herein on January 23, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission, No. 162, made the 20th day of December, 1907, to inquire whether the regulations, equipment and appliances of the Interborough Rapid Transit Company in respect to transportation of persons in the First District were unsafe, improper or inadequate and it further appearing that the said order was duly served upon the Interborough Rapid Transit Company and that the said service was by said Company duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order for hearing specified on January 23, 1908, at which hearing Mr. Commissioner Eustis presided and Alfred E. Mudge, Esq., appearing for the Interborough Rapid Transit Company and Arthur DuBols, Esq., Assistant Counsel, appearing for the Public Service Commission for the First District.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is  
*Ordered*, That the said proceedings be dismissed without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of any matters covered by said order for Hearing No. 162 or the proceedings thereon.

**Long Island Railroad Company.—Lack of gates at Twenty-second street crossing, College Point.**

COMPLAINT OF WILLIAM KLIEN  
against

LONG ISLAND RAILROAD COMPANY.

Complaint Order No. 322 (see form, note 1) issued March 10th.

The company answered March 19th and instead of gates which the complaint alleged were necessary suggested the use of a warning bell which it agreed to install if required. The complainant having stated that a warning bell would be satisfactory to him, the Commission directed the installation of such warning bell.

**Long Island Railroad Company.—Safety precautions at the grade crossing at Fresh Pond road and Sherman street, borough of Queens.**

Hearing Order No. 283.  
Opinion of Commissioner Bassett.  
Final Order No. 384.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvement in an addition to the service of the LONG ISLAND RAILROAD COMPANY, in respect to safety precautions at the grade crossing at Fresh Pond road and Sherman street, borough of Queens, city of New York.

ORDER FOR HEARING  
No. 283.

February 21, 1908.

*It is hereby ordered,* That a hearing be had on the 5th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, Number 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Long Island Railroad Company in respect to transportation of persons and property in the First District are unreasonable, unsafe, improper or inadequate as hereinafter set forth, and whether changes, improvement and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact then to determine whether a change, addition and improvement in the regulations, practices, equipment, appliances and service of said company as hereinafter set forth are such as will be reasonable, safe, adequate and proper and ought reasonably to be made in order to promote the safety and convenience of the public and employees of the railroad, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

That the Long Island Railroad Company install, maintain and operate suitable gates, and such other safety precautions as the Commission may deem necessary, for the protection of the public at the grade crossing at the junction of Fresh Pond road and Sherman street, borough of Queens, city of New York.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Long Island Railroad Company be given at least ten days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held March 5th and 13th.

372 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

OPINION OF COMMISSION.

(Adopted November 24, 1908.)

COMMISSIONER BASSETT:—

This matter was brought to the attention of the Commission by the Board of Aldermen and after examination of the premises, the Bureau of Inspection recommended that gates be operated at this point during the entire year, for the following reasons:

1. Because a public school within three blocks of this crossing on Fresh Pond Road is about to be opened.
2. Because by tabulations made, traffic is considerably heavier at this point than at other roads now guarded by flagmen.
3. Because of obstructions which prevent a view of approaching trains.
4. Because drivers approaching this crossing from the north are unable to see eastbound trains.

The Long Island Railroad Company operates, during the summer months, from about the 1st of June to the early part of September, a large number of trains across Fresh Pond road, to the various race tracks. During the winter months only four trains a day, in each direction, are operated across this road, no gate-man or flagman is on duty and the gates dismounted from their pedestals. There is a sign and an alarm bell at the crossing.

The testimony of the railroad officials is to the effect that the entire cost of maintaining a flagman at this crossing during the winter months is not over \$50 a month and as they have the gates there would be no additional expense. At the end of the hearing it was stated by the railroad officials that there had been an accident at this point in which an automobile was run into, but that the accident occurred at a time when the gates were in operation and when a flagman was stationed there. It was also stated by the railroad officials that they would rather send a flagman ahead of each train operated across this crossing during the winter months than station a flagman at the road crossing.

While it might be less expensive for the railroad company to send its brakeman ahead of each train with a flag at this point, I believe, nevertheless, that in practice the employees would be apt to neglect this precaution and I do not favor an order of this Commission directing this means of reducing the danger. I recommend the adoption of an order directing the company to maintain a flagman at this crossing and operate the gates from May 1, 1908, for a period of two years. The school mentioned in the testimony will undoubtedly be opened by the middle of September and until it appears that the Fresh Pond road will not be much used by these school children, it will, in my opinion, be reasonable to require an expenditure of \$50 a month on the part of the railroad company.

Thereupon the following final order was issued:

ORDER No. 384.

March 24, 1908.

This matter coming on upon the report of the hearing had herein on March 5, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission made February 21, 1908, No. 283, and returnable on the 5th day of March, 1908, and that the said order was duly served upon the Long Island Railroad Company and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified, on March 5, 1908, and by adjournment duly had on March 13, 1908, at both of which sessions Mr. Commissioner Bassett presided, and Arthur DuBols, Esq., appearing for the Commission, and John Keeney, Esq., appearing for the Long Island Railroad Company, and proof having been taken at both of said sessions and it being made to appear after the proceedings on the said hearing that during certain winter months no flagman was stationed and no gates were operated at the grade crossing of the Long Island Railroad Company with the Fresh Pond road and it being made to appear after the proceedings on said hearing that the regulations, practices, service and equipment of the said railroad company in respect to the transportation of persons upon said Long Island Railroad, in the First District, has been and is unsafe, unreasonable, improper and inadequate, because of the fact that insufficient precautions are

taken for the safety of the public at the grade crossing at Fresh Pond road, and it further appearing that changes, improvements and additions ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public or of the railroad employees, or in order to secure adequate service and facilities for the transportation of passengers, and it being the judgment of the Commission that the changes, additions and improvements in the regulations, equipment, appliances and service of the said company, as before set forth are such as are just, reasonable, safe, adequate and proper and ought reasonably to be made, in order to promote the security and convenience of the public and employees of the railroad company.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is ordered, That the Long Island Railroad Company be and it hereby is directed and required to maintain, during the entire year, a gateman or flagman at the crossing of its tracks with the Fresh Pond road, in the borough of Queens, and that the safety gates at this grade crossing be operated by said gateman or flagman during all hours in which trains are scheduled to pass this point.

It is further ordered, That said service be put into effect by the said Long Island Railroad Company not later than May 1, 1908, and that it be continued for a period of two years.

And it is further ordered, That the said Long Island Railroad Company notify the Public Service Commission for the First District within five days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

**Long Island Railroad Company.—Flagman at Merrick road grade crossing on the Montauk division at Springfield, Queens county.**

In the Matter  
of the

Hearing on Motion of the Commission on the Question of Regulations, Practices, Appliances and Service of the LONG ISLAND RAILROAD COMPANY.

HEARING ORDER  
No. 594.  
June 23, 1908.

"Flagman at Merrick Road grade crossing on the Montauk Division at Springfield, Queens County."

It is hereby ordered, That a hearing be had on the 15th day of October, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire whether the regulations, practices, equipment, appliances, or service of the Long Island Railroad Company in respect to transportation of persons and property in the First District are unreasonable, unsafe, improper or inadequate as hereinafter set forth, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact then to determine whether a change, addition and improvement in the regulations, practices, equipment, appliances and service of said company as hereinafter set forth are such as will be reasonable, safe, adequate and proper and ought reasonably to be made in order to promote the safety and convenience of the public employees of the railroad, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

Whether said Long Island Railroad Company should be directed to station and maintain during the entire twenty-four hours of each day a flagman at the grade crossing of Merrick road across the tracks of its Montauk division at Springfield, Queens county, Long Island.

And if any such regulations, changes, improvements and additions be found to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further Ordered, That the said Long Island Railroad Company be given at least ten (10) days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held October 13th and 20th.

unload upon the city the unprofitable sections of the lines and keep the desirable portions? No proposition has been made to the Commission that the tunnel from the Battery to the Atlantic avenue station should be taken back by the city. Why then should the public be asked to pay for the Steinway tunnel which seems to have been undertaken without due foresight? Does any one suppose that if the company expected to make a profit from it, they would be anxious to sell it to the city?

Yet, it might be wise for the city to purchase the Steinway tunnel, if funds were available without the necessity of taking money from more profitable lines and lines that are more urgently needed. This last point might be waived, if the Commission were assured that the city would be freed from any possibility of a large annual deficit from the start or even after a few years. If the Interborough Company were to make a proposition that the terms of their present operating contract with the city should be extended to the Steinway tunnel, such an offer, or indeed any offer that will be made, will be given most careful consideration. Under the present offer, because of its peculiar provisions, the city could afford to give only a small amount, and still have any reasonable expectation that even after several years, the receipts would be sufficient to pay the expenses called for by the proposal.

#### INCREASE IN LAND VALUES.

In the letter of Interborough Company, the statement is made that the increase in taxable values in the borough of Queens has been \$140,000,000 in the last three years, and that on the basis of fifteen mills per \$100 of valuation, the increase in income to the city has been \$2,100,000. It is also stated that values will still further increase when the tunnel is opened and a five-cent fare established through to Lexington avenue, Manhattan. The conclusion which has been drawn from these statements is that the deficit from the operation of the tunnel would be more than repaid by the increased receipts from taxation.

There is little doubt that every increase in transportation facilities does increase the value of the real estate so benefited. But the increase in values in Queens is due to several factors. First and foremost, property is now assessed more nearly at its real value than formerly. This alone has caused a big increase. Second, property in suburban districts increases in value, even though transportation facilities remain stationary. The very growth of the city puts up values. Third, the erection of the Queensboro Bridge has raised values. Fourth, the Pennsylvania tunnels have had a similar effect. It is to be remembered also that the territory tributary to the Steinway tunnel is only a part of the borough of Queens. A very much larger portion will not be affected at all. It is probably true, however, that the opening of the Steinway tunnel and the inauguration of a five-cent fare to Manhattan would be, and perhaps has been, the cause of an increase in the value of property much in excess of the cost of the tunnel. But most of the increase would go to the owners; the city would get only a small portion of it through taxation. Further, even that small portion has to be divided among many city departments. Expenditures for street lighting, cleaning and paving, school parks, police, fire protection, health, charities and the many governmental purposes grow even faster than population and seem to consume every fresh contribution made through taxation by the increased values in real estate. The multiplication of values within the past century has been enormous, but expenditures for governmental purposes seem to have kept pace with them. Even with the growth in Queens referred to above, this borough still contributes less to the city of New York than is expended within the borough from the city's fund. If the proposal of the Interborough Company were accepted, the contribution made by the taxpayers outside of Queens to the support of Queens would have to be still further increased, and this increase would be in addition to the \$800,000 to be contributed on account of the Queensboro Bridge.

#### OTHER FEATURES.

There are other features of the proposition by the Interborough Company that are not satisfactory. It gives no assurance that the New York and Queens

Company would continue to carry passengers from any point on their system as extended in the future through to Manhattan for five cents. Yet the principal reason why the city is urged to buy the tunnel is that by so doing, thus indirectly granting a subsidy to the company, a five-cent fare may be secured instead of a seven or eight-cent fare. As the proposition now stands, a foreclosure might bring the lines of the New York and Queens Company into the hands of parties not bound by the proposed contract with the city. The result might easily be an increase in fares, and thus the very object prevented for which the tunnel was purchased.

The city should also have the right to allow the other railroads to run their cars through the tunnel, but the proposed form of contract makes no such provision. Other transportation lines may be built in Queens, and the city should have the right to allow them access to the tunnel. How can any one justify a contract that provides for the leasing of public property for the exclusive use of one corporation when the price paid is not sufficient to pay fixed charges?

The method of computing the small rental to be paid to the city might be productive of much litigation. A method of evasion has been pointed out, and if passengers were to transfer at any one of the stations from the lines or cars of the New York and Queens Company the question might easily arise, whether they were local or through passengers.

#### ALTERNATIVES.

In considering this proposition, the Commission has given much attention to an alternative solution. There are several ways by which the tunnel could be put into operation in the near future.

1. It has been stated that any plan by which a large annual deficit will not be placed upon the city, at least not after a few years, will be given careful consideration.

2. If the opening of the tunnel has been productive of such large increases in the value of real estate, why should not such real estate bear the cost of the tunnel, or part of it, at least, if the city buys the tunnel? If the statements frequently made are correct, an assessment of the cost would not consume by a large percentage the increase in values which the tunnel has *already* caused. The property holders would still retain a profit. This theory is in common practice, for many public improvements are now paid by the property benefited.

3. Whether there is a valid franchise for operation now in the hands of the directors of the New York and Long Island Company is a question to be decided by the courts, and it is now before them. If the directors have the necessary franchises, permits and consents, they may not be able to exercise the right to operate themselves, but they probably could transfer to another company. If they do not have sufficient authority it could be granted to some company to which the physical property could also be transferred. If there is anything in the present law that interferes in any way, an attempt might have been made last winter, and can be made this winter, to have such interference removed by legislation.

4. It has been, and still is, possible for the Board of Estimate and Apportionment, subject to the general statutory provisions, to grant a franchise for a tunnel railroad to a private company. Such a franchise may be made to run for fifty years with a renewal for twenty-five years — the term of the lease of the present subway.

If the company prefers to litigate its present claim to a perpetual franchise, and allow its property to lie idle meanwhile, it doubtless has that right. But if it desires to have the tunnel put in operation, there are at least four ways in which it may be done. *There is no insuperable difficulty to private operation of the Steinway tunnel*, and there has been none; it could be put in operation in a few months under the present law or under new legislation. The company built the tunnel; the city is not responsible for the present situation; it is incumbent upon the company, and not upon the city, to see that the tunnel is put in operation.

borough of Queens, city of New York, not later than August 1, 1908, and the time within which to comply with the said Order No. 549 having been extended to and including the 15th day of September, 1908, by the terms of Extension Order No. 653 made herein on the 3rd day of August, 1908, and the time within which to comply with the said order having been further extended to and including the 10th day of October, 1908, by the terms of Extension Order No. 742 made herein on the 25th day of September, 1908, and the Long Island Electric Railway Company having, on October 10, 1908, applied in writing for a further extension of such time within which to comply with the provisions of the above mentioned order,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Long Island Electric Railway Company within which to comply with the terms of Final Order No. 549 above mentioned, with respect to the installation of protective devices at the grade crossing at South street, Jamaica, borough of Queens, be, and the same hereby is, extended to and including the 10th day of November, 1908.

EXTENSION ORDER No. 834.

November 13, 1908.

An order, No. 549, having been made herein on or about the 5th day of June, 1908, ordering and directing the Long Island Railroad Company and the Long Island Electric Railway Company to install, operate and maintain at all times, protective devices at the grade crossing of their tracks at South street, Jamaica, borough of Queens, city of New York, similar in character and at least equal in efficiency to those now installed and maintained at the crossing of the Jamaica and Hempstead turnpike with the Long Island Railroad, near Queens, borough of Queens, city of New York, not later than August 1, 1908, and the time within which to comply with the said order having been extended to and including the 15th day of September, 1908, by the terms of Extension Order No. 653, made herein on the 3rd day of August, and the time within which to comply with the said order having been further extended to and including the 10th day of October, 1908, by the terms of Extension Order No. 742 made herein on the 25th day of September, 1908, and the time within which to comply with the said order having been further extended to and including the 10th day of November, 1908, and the Long Island Electric Railway Company having on November 12, 1908, applied in writing for a further extension of such time within which to comply with the provisions of the above mentioned order,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Long Island Electric Railway Company within which to comply with the terms of Final Order No. 549 above mentioned with respect to the installation of protective devices at the grade crossing at South street, Jamaica, borough of Queens, be, and the same hereby is, extended to and including the 17th day of November, 1908.

EXTENSION ORDER No. 856.

November 24, 1908.

An order, No. 549, having been made herein on or about the 5th day of June, 1908, ordering and directing the Long Island Railroad Company and the Long Island Electric Railway Company to install, operate and maintain at all times, protective devices at the grade crossing of their tracks at South street, Jamaica, borough of Queens, city of New York, similar in character and at least equal in efficiency to those now installed and maintained at the crossing of the Jamaica and Hempstead turnpike with the Long Island Railroad, near Queens, borough of Queens, city of New York, not later than August 1, 1908, and the time within which to comply with the said order having been extended to and including the 15th day of September, 1908, by the terms of Extension Order No. 653 made herein on the 3rd day of August, and the time within which to comply with the said order having been further extended to and including the 10th day of October, 1908, by the terms of Extension Order No. 742 made herein on the 25th day of September, 1908, and the time within which to comply with the said order having been further extended to and including the 10th day of November, 1908, and the time within which to comply with the said order having been further extended to and including the 17th day of November, 1908, by the terms of Extension Order No. 834 made herein on the 13th day of November, 1908, and the Long Island Electric Railway Company having, on November 17, 1908, applied in writing for a further extension of such time within which to comply with the provisions of the above mentioned order,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Long Island Electric Railway Company within which to comply with the terms of Final Order No. 549 above mentioned with respect to the installation of protective devices at the grade crossing at South street, Jamaica, borough of Queens, be, and the same hereby is, extended to and including the 1st day of December, 1908.

**Long Island Railroad Company.**—Safety precautions at the grade crossings at Hollywood and Sea View avenues in the borough of Queens.

Hearing Order No. 721.  
Opinion of Commissioner Bassett.  
Final Order No. 857.

In the Matter  
of the

**Hearing on the Motion of the Commission, on the question of Changes and Improvements in and Additions to the Regulations, Practices, Equipment, Appliances and Service of the LONG ISLAND RAILROAD COMPANY, in respect to Safety Precautions at the Grade Crossings at Hollywood and Sea View Avenues, in the Borough of Queens, City of New York.**

HEARING ORDER No. 721.  
September 11, 1908.

*It is hereby ordered,* That a hearing be had on the 24th day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of said company upon and near its line near Far Rockaway, in the borough of Queens, city of New York, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate; and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following, at the places herein mentioned, would be just, reasonable, safe, adequate and proper and whether such changes shall be put in force, observed and used on the line of said company; and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, crossings, safety, precautions or other property or device used by said company, in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees, or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

(1) Whether said company should be directed to erect and maintain proper gates with suitable signs and signals at the points where said line crosses Hollywood avenue and Sea View avenue, in the borough of Queens, city and State of New York, and should station one or more persons at said points for the proper operation and management of said gates and for the proper warning of pedestrians and vehicles crossing said line at said points.

(2) Whether said company should be instructed to install and maintain at the proper place or places a signal bell or signal bells to acquaint and warn the flagmen or gatemen at said crossings of the approach of trains from either direction and from both directions, to the end that the gates at said crossing may be lowered at the proper time and in suitable time to protect the public from danger in crossing the tracks of said railroad at those points.

(3) Whether said company should be directed to make other changes and improvements in or additions to its property, equipment or appliances or in its regulations, practices and service upon said line at said points of grade crossings.

And if such changes, improvements, and additions, or any of them, be such as ought to be made as aforesaid, then to determine the nature and extent of such changes, improvements and additions and to determine what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*It is further ordered,* That said Long Island Railroad Company be given at least five (5) days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinbefore set forth.

Hearings were held September 24th and October 2d.

OPINION OF COMMISSION.  
(Adopted November 24, 1908.)

COMMISSIONER BASSETT:—

Hollywood and Sea View avenues are streets in Far Rockaway, borough of Queens, crossed at grade by the Long Island Railroad. A number of accidents and narrow escapes have happened at these two crossings. Complaints of citizens and

recommendations from the Commission's accident bureau caused the Commission to hold a series of hearings on the subject of better protection of the public at these crossings. Investigations made by our engineers, the results of which have been placed in evidence, show that one man cannot operate gates at these streets without danger of closing in foot passengers at one crossing or the other. On the other hand, the traffic at present does not seem to be such as would warrant the installation of independently operated gates at each crossing. The dangerous period is in the summer time, when the large amount of travel to the sea shore calls into operation both trains and trolley cars. In the winter conditions are not at present bad and the danger is very slight. The Long Island Railroad Company introduced considerable evidence showing that a system of semaphores and bells would be adequate protection to the public. I have submitted to our chief engineer the question as to whether flagmen or semaphores are preferable on these crossings, and it is his opinion that flagmen are better. I therefore recommend that the Long Island Railroad Company be required to maintain one flagman at the Hollywood avenue crossing and one flagman at the Sea View avenue crossing from 6 A. M. to 12 P. M. each day from June 1st to September 30th, inclusive. Let an order be prepared accordingly.

Thereupon the following final order was issued:

**FINAL ORDER No. 857.**

November 24, 1908.

This matter coming on upon the report of the hearing had herein on September 24, 1908, and October 2, 1908, and it appearing that the said hearing was had by and before the Commission pursuant to Hearing Order No. 721, issued September 11, 1908, and returnable September 24, 1908, at 2:30 P. M., and it appearing that said order was duly served upon said Long Island Railroad Company and that such service was by it duly acknowledged, and it appearing that said hearing was had by and before the Commission on the matters specified in said order on September 24, 1908, and October 2, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and C. L. Addison, Esq., appearing for said railroad company; and testimony having been taken upon the said hearing, and it having been made to appear after the proceedings on said hearing that the regulations, practices and service of said Long Island Railroad Company upon and near its line near Far Rockaway in the borough of Queens, city of New York, at the points where said line crosses Hollywood avenue and Sea View avenue at grade, are unsafe, improper and inadequate, particularly between and including June 1st and September 30th in each year, in that there is nothing at said crossings to warn persons about to cross the tracks at said points of the approach of trains or cars from either direction and that changes therein and additions thereto in the particulars following ought reasonably to be made and to be thereafter put in force, observed and used upon said line, and that it would be reasonable to require that such changes and additions should be instituted on or before the first day of June, 1909,

Now, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is Ordered:* 1. That said Long Island Railroad Company be and it hereby is directed and required to maintain one flagman at the Hollywood avenue crossing and one flagman at the Sea View avenue crossing upon the said line of said company, at Far Rockaway in the borough of Queens, city and State of New York, between the hours of 6 A. M. and 12 P. M. each day from June 1st to September 30th, inclusive, in each year, whose duty it shall be, and who shall be instructed by said company to warn all persons about to cross the tracks at said crossings of the approach of trains or cars from either direction.

2. *It is Further Ordered*, That this order shall take effect on June 1, 1909, and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. *It is Further Ordered*, That said Long Island Railroad Company notify the Public Service Commission for the First District on or before the first day of December, 1908, whether the terms of this order are accepted and will be obeyed.

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**Nassau Electric Railroad Company.—Erection of gates at Eighty-sixth street crossing on the west end line.**

Opinion of Commissioner McCarroll.  
Final Order No. 585.

Extension Order No. 732.

Extension Order No. 802.

Extension Order Case No. 585.

OPINION OF COMMISSION.  
(Adopted June 19, 1908.)

COMMISSIONER McCARROLL:—

On the evening of April 20, 1908, a report reached the Commission that a very serious accident, resulting in the injury of several persons, had occurred at Eighty-sixth street, in the borough of Brooklyn, on the West End line operated by the Nassau Electric Railroad Company, caused by a collision between a northbound elevated train on said West End line and a westbound trolley car on Eighty-sixth street at the point where the tracks of said West End line cross the tracks of the trolley line. The map hereto annexed will show the general situation and the location of the tracks. The tracks at this point cross each other at grade.

In view of the serious nature of this accident, it was deemed best to proceed with an immediate investigation under the provisions of section 47 of the Public Service Commissions Law, without waiting for the issuance of any hearing order, and this was done.

The testimony produced upon the hearing tended to show that the accident was caused by the failure of the motorman on the trolley car to heed the danger signal displayed by the signalman at this crossing, warning him to stop his car, by reason whereof his car proceeded upon the tracks of the elevated line at the crossing and was struck by a northbound elevated train which had been given the right of way. The testimony showed that the trolley car was turned over upon its side and badly demolished, and that several persons were injured. The motorman of the elevated train and the signalman at the crossing were both examined, as was also a disinterested spectator, and the testimony of all these witnesses as to the cause of the accident was substantially identical. The motorman of the trolley car was subpoenaed but was not examined as a witness as he was under arrest on a charge growing out of the accident in question and it was feared that to examine him might result in giving him immunity from prosecution in the criminal court. As it is not the purpose of the Commission to determine the guilt or innocence of any person, but to arrive at a conclusion of the cause of the accident with a view to taking measures for the prevention of future accidents, it was not deemed necessary to examine other witnesses than those examined.

Upon the hearing several measures were proposed for the prevention of future accidents at this crossing. These were:

(1) The location of stations on the elevated line immediately north and south of Eighty-sixth street so that an elevated train, whether north or southbound, would be compelled to stop for the crossing in making its regular station stop.

(2) The installation of an interlocking system and a tower to operate the same whereby the tracks on one line would be closed to traffic while the tracks on the other line would be in use.

(3) The installation of safety gates across Eighty-sixth street on each side of the tracks of the elevated line.

For the following reasons it was thought best to adopt the last method suggested:

(1) The first method would involve the removal of stations from their present locations, which would result in great inconvenience to the traveling public residing in the locality of those stations.

(2) The second method would take no account of the vehicular and other traffic through Eighty-sixth street, of which there is a great volume.

(3) The company operating the trolley line through Eighty-sixth street has already installed derailing devices and the operation of these devices, together with the operation of the gates suggested, would provide very effectually against the likelihood of trolley cars proceeding upon the crossing in the way of elevated trains.

I desire to add that in this investigation the Nassau Electric Railroad Company, operating the elevated line, and the Brooklyn Heights Railroad Company, operating the trolley line, have afforded the Commission all the assistance in their power in the way of producing evidence upon this hearing and furnishing information from which the Commission could arrive at a determination as to the cause of this accident.

Thereupon the following final order was issued:

In the Matter  
of the  
Hearing on the Motion of the Commission as to the  
Regulations, Practices, Equipment, Appliances and  
Service of the NASSAU ELECTRIC RAILROAD  
COMPANY on the West End Line at the Intersection  
of Eighty-sixth Street and Bay Nineteenth  
Street, in the borough of Brooklyn.

FINAL ORDER No. 585.  
June 19, 1908.

After Investigation of Accident on West End Line.

This matter coming on upon the report of the hearing had herein on the 24th day of April, 1908, the 5th day of May, 1908, and the 26th day of May, 1908; and it appearing that said hearing was had upon motion of the Commission pursuant to the provisions of the Public Service Commissions Law, but without the issuance of a preliminary hearing order; and that said hearing was had for the purpose of investigating the cause of an accident which occurred on the 20th day of April, 1908, on the line of said Nassau Electric Railroad Company known as the "West End Line" at the intersection of Eighty-sixth street and Bay Nineteenth street in the borough of Brooklyn, city and State of New York, at the point where said Nassau Electric railroad crossed said Eighty-sixth street; and it appearing that said hearing was had by and before the Commission upon the matter aforesaid on the 24th day of April, 1908, the 5th day of May, 1908, and the 26th day of May, 1908, before Mr. Commissioner McCarroll, presiding; Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and Arthur N. Dutton, Esq., attending for said railroad company; and proof having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that changes and improvements in and additions to the equipment and appliances of said Nassau Electric Railroad Company upon and near its said line known as the "West End Line" at the point where said line intersects and crosses Eighty-sixth street in the borough of Brooklyn, city and State of New York, ought reasonably to be made in the manner herein below set forth, in order to promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of passengers, and that it would be reasonable to require that such changes, improvements and additions be made by or before the 1st day of October, 1908; and said Nassau Electric Railroad Company having expressed its willingness to accept such an order made as a result of said hearing or investigation, directing the making of such changes, improvements and additions and the completion of the same on or before October 1, 1908;

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered:* 1. That said Nassau Electric Railroad Company be, and it hereby is directed and required to install and erect and maintain across said Eighty-sixth street and on each side of the tracks of said company at the point where said tracks cross said Eighty-sixth street, suitable and proper safety gates and erect and operate the same in such manner as to adequately prevent the use of said crossing by pedestrians, vehicles or trolley cars at all times when trains upon said company's line shall be approaching said Eighty-sixth street and crossing the same.

2. It is further ordered. That said gates be installed and erected and placed in operation by or before the 1st day of October, 1908, and thereafter maintained and operated in the manner hereinbefore mentioned.

3. It is further ordered, That this order shall take effect immediately and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

4. It is further ordered, That said Nassau Electric Railroad Company notify the Public Service Commission for the First District within five days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

Upon applications of the company the following extension orders were issued:

EXTENSION ORDER No. 732.  
September 25, 1908.

An order, No. 585, having been made herein on the 19th day of June, 1908, ordering and directing the Nassau Electric Railroad Company to install, erect and maintain across Eighty-sixth street and on each side of tracks of said company at the point where said tracks cross said Eighty-sixth street, suitable safety gates, said gates to be placed in operation by or before October 1, 1908, and the said Nassau Electric Railroad Company having, on September 16, 1908, applied in writing to this Commission for an extension of such time;

Now, on motion made and duly seconded, it is

*Ordered,* That the time within which the Nassau Electric Railroad Company shall comply with the terms of Order No. 585 be, and the same hereby is, extended to and including the 1st day of November, 1908.

## EXTENSION ORDER No. 802.

October 27, 1908.

An order, No. 585, having been made herein on the 19th day of June, 1908, ordering and directing the Nassau Electric Railroad Company to install, erect and maintain across Eighty-sixth street and on each side of tracks of said company at the point where said tracks cross said Eighty-sixth street, suitable safety gates, said gates to be placed in operation by or before October 1, 1908, and the time within which to comply with the terms of said order having been extended to and including November 1, 1908, by the terms of Order No. 732, adopted on September 25, 1908, and the said Nassau Electric Railroad Company having, on October 23, 1908, applied in writing to this Commission for a further extension of such time;

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Nassau Electric Railroad Company within which to comply with the terms of Order No. 585, be, and the same hereby is, extended to and including December 1, 1908.

## EXTENSION ORDER CASE No. 585.

December 4, 1908.

An order, No. 585, having been made herein on the 19th day of June, 1908, ordering and directing the Nassau Electric Railroad Company to install, erect and maintain across Eighty-sixth street and on each side of the tracks of said company at the point where said tracks cross said Eighty-sixth street, suitable safety gates, said gates to be placed in operation by or before October 1, 1908, and the time within which to comply with the terms of the said order having been extended to and including November 1, 1908, by the terms of Order No. 732, adopted on September 25, 1908, and the said time within which to comply with the terms of Order No. 585 having been further extended to and including December 1, 1908, by the terms of Extension Order No. 802, adopted on October 27, 1908, and the said Nassau Electric Railroad Company having on December 1, 1908, applied in writing to this Commission for a further extension of time;

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Nassau Electric Railroad Company within which to comply with the terms of Order No. 585 be, and the same hereby is, extended to and including January 1, 1909.

## New York Central and Hudson River Railroad Company.—

Additional safety appliances and precautions at Two Hundred and Twenty-fifth street grade crossing.

Hearing Order No. 212.  
Final Order No. 258.

In the Matter  
of the

Hearing on the motion of the Commission as to the regulations, practices, equipment and service of the NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, in the respects herein-after mentioned.

ORDER FOR HEARING  
No. 212.  
January 21, 1908.

*It is hereby Ordered*, That a hearing be had on the 3d day of February, 1908, at 4 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of said company upon and near its line known as the New York and Putnam Division, at its point of crossing at Two Hundred and Twenty-fifth street, in the borough of the Bronx, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate; and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company; and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight or property, viz.:

384 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Whether said company should be directed to erect and maintain proper gates with suitable signs and signals at the point where said line crosses Two Hundred and Twenty-fifth street, in the borough of the Bronx, city and State of New York, and should station one or more persons at said point for the proper operation and management of said gates and for the proper warning of pedestrians and vehicles crossing said line at said point.

Whether said company should be directed to improve the equipment of the gates now installed at the above mentioned crossing or to place new and more adequate gates at said crossing.

Whether the said company should be directed to station more competent and efficient gatemen at said crossing.

Whether said company should be instructed to install and maintain at the proper place or places a signal bell or signal bells to acquaint and warn the flagman or gateman at said crossing of the approach of trains from either direction and from both directions, to the end that the gates at said crossing may be lowered at the proper time and in suitable time to protect the public from danger in crossing the tracks of said railroad at that point.

Whether said company should be directed to make other changes in its property, equipment or appliances or in its regulations, practices and service upon said line at said point of grade crossing.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That said the New York Central and Hudson River Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinbefore set forth.

Hearing held February 3d.

The following final order was issued:

ORDER No. 258.

February 11, 1908.

This matter coming on upon the report of the hearing had herein on the 3d day of February, 1908, under order for hearing No. 212, dated January 21, 1908, and it appearing that said hearing was had pursuant to said order, which was duly served on the said New York Central and Hudson River Railroad Company on the 22d day of January, 1908, and that said hearing was held by and before the Commission on the matters embraced in said order on the 3d day of February, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., appearing for the Commission and Clyde Brown, Esq., appearing for the said railroad company and proof having been taken upon said hearing and it having been made to appear by the proceedings on said hearing that the regulations, practices and service of said railroad company in respect to the transportation of persons, freight and property upon its line known as the New York and Putnam Division, at the Two Hundred and Twenty-fifth street crossing of said division, in the borough of the Bronx, city and State of New York, are unsafe, Improper and Inadequate in that the gates at said crossing are maintained in a vertical position and are in practice lowered only when trains are approaching and that owing to obstructions in the line of vision of the gateman at said crossing it is impossible for him in every instance to detect the approach of trains in time to lower said gates and thereby protect the traveling public, and that said gates are at times not lowered in time to protect the traveling public and that the changes in the method of operating said gates at said crossing ought reasonably to be made, in order to promote the security and convenience of the public and it appearing from the testimony taken on said hearing that the security and convenience of the public would be promoted by a change in the practices of said company, in the manner of operating said gates at said crossing, by keeping said gates lowered in a horizontal position, except at such times as pedestrians, teams or vehicles may wish to cross the railroad tracks at said crossing and it appearing from the testimony taken upon said hearing that the maintenance of said gates in a vertical position, as above stated, is contrary to and in violation of the orders of said railroad company to its gateman at said crossing and that a compliance with such orders would promote the security and convenience of the public as aforesaid.

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered*, That the New York Central and Hudson River Railroad Company be and it hereby is directed and required to keep and maintain the gates at said crossing in a horizontal position at all times except when pedestrians, teams or vehicles may desire to cross the tracks at said crossing.

*It is further Ordered*, That said New York Central and Hudson River Railroad Company put such change in the operation of said gates into effect within five days after service upon it of a certified copy of this order.

*It is further Ordered*, That said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District within five (5) days after the service of this order whether the terms of this order are accepted and will be obeyed.

**New York Central and Hudson River Railroad Company.—  
Additional flagmen along Eleventh avenue.**

Hearing Order 646.  
Opinion of Commissioner Eustis.  
Final Order 659.  
Rehearing Order 697.  
Final Order 707.

In the Matter  
of the

Hearing on motion of the Commission on the question of the regulations, practices, appliances, equipment and service of the NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

HEARING ORDER No. 646,  
July 21, 1908.

"Additional flagmen along Eleventh Avenue."

*It is hereby Ordered,* That a hearing be had on the 29th day of July, 1908, at 11 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, appliances, equipment and service of the New York Central and Hudson River Railroad Company in respect to the transportation of persons and property in the First District are unreasonable, improper, unsafe or inadequate as hereinafter set forth, and whether changes, additions and improvements thereto ought reasonably to be made in the manner below set forth in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of persons and property, and to determine whether a change, addition and improvement, in the regulations, practices, equipment, appliances and service of said company, as hereinafter set forth, are such as will be just, reasonable, safe, adequate and proper and ought reasonably to be made:

Whether the New York Central and Hudson River Railroad Company should be directed to increase the number of flagmen employed at street crossings at and along its tracks on Eleventh avenue in the city of New York.

Whether the hours during which said flagmen are on duty at said street crossings should be lengthened.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions, and to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered,* That the said New York Central and Hudson River Railroad Company be given at least three days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held July 29th and August 5th.

OPINION OF COMMISSION.

(Adopted August 11, 1908.)

COMMISSIONER EUSTIS:—

This hearing was had on the motion of the Commission after many and strenuous complaints made by residents of the west side. The complaints cover the entire subject of track removal, but this hearing was limited to the question of whether additional flagmen should be maintained at the cross streets on Eleventh avenue. It appeared at the hearing that all parties agreed that the situation was dangerous, the testimony of our inspectors and of the railroad's witnesses tending to show the principal danger to be on the tracks between streets and not on the cross streets themselves. The train movement on Eleventh avenue consists of six passenger trips, several milk or fruit train trips and a varied amount of freight switching done by one engine only.

The Board of Railroad Commissioners several years ago recommended that cer-

tain flagmen be stationed. An examination of the conditions at each cross road convinces me that there are other streets where protection is needed to an equal if not greater extent, and the chief defect of the present system of protection appears to me to be the hours during which the flagmen work. At present the streets which are protected have either one flagman on duty from 7 A. M. to 6 P. M., or, in the case of a few of the most crowded streets, one flagman from 7 A. M. to 6 P. M., and a second flagman from 6 P. M. to 7 A. M. My recommendations for an increased service are contained in the proposed order accompanying this report, in which, with the exception of Forty-first, Forty-fourth, Forty-fifth, Fifty-fifth, Fifty-sixth, Fifty-seventh and Fifty-eighth streets, protection is provided at all cross streets. At Forty-third, Forty-sixth, Forty-seventh and Forty-eighth streets, the provision is for a watchman from 7 A. M. to 10 P. M., it being my intention to have a flagman on duty in the hours of the heaviest cross traffic immediately after 6 o'clock and in the evening hours when people are going down to the piers and the riverside. At Fifty-second, Fifty-third and Fifty-fourth streets the provisions are for flagmen at all hours of the day and night during the summer months, owing to the heavy traffic across the tracks to DeWitt Clinton Park.

The proposed order is in the form calling for not less than the protection specified, and should the railroad comply with the order strictly the net result would be an increase of not over two or three watchmen and extended hours of work at perhaps half a dozen crossings.

Thereupon the following final order was issued:

FINAL ORDER No. 639.

August 11, 1908.

This matter coming on upon the report of the hearing had herein on July 29, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made July 21, 1908, and returnable on July 29, 1908, and that said order was duly served upon the New York Central and Hudson River Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on July 29, 1908, and by adjournment duly had on August 5, 1908, before Mr. Commissioner Eustis presiding, Arthur DuBois, Esq., appearing for the Commission, and A. S. Lyman, Esq., appearing for the railroad company at both said sessions, and proof having been taken, and it appearing after the said hearing that the tracks of the New York Central and Hudson River Railroad Company on Eleventh avenue are at certain places insufficiently protected, and that the regulations, practices, service and equipment of the New York Central and Hudson River Railroad Company, in respect to the transportation of persons and property on its Eleventh avenue tracks, has been and is in certain respects unsafe, unreasonable, improper and inadequate because of the fact that certain street crossings are insufficiently protected, and it further appearing that changes, improvements and additions ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public or of the railroad employees, and it being the judgment of the Commission that the changes, additions and improvements in the regulations, equipment, appliances and services of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper and ought reasonably to be made, in order to promote the security and convenience of the public and employees of the said railroad company:

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
 Ordered, That the New York Central and Hudson River Railroad Company maintain at the times and in the places below specified watchmen or flagmen whose services shall be exclusively devoted to the protection of the public at the street crossings below named for at least the hours below specified:

1. At Thirty-fourth street and Eleventh avenue, not less than one watchman or flagman at all hours of the day and night.
2. At Thirty-fifth street and Eleventh avenue, not less than one watchman or flagman at all hours of the day and night.
3. At Thirty-seventh street and Eleventh avenue, not less than one watchman or flagman at all hours between 7 A. M. and 6 P. M.
4. At Thirty-eighth street and Eleventh avenue, not less than one watchman or flagman at all hours between 7 A. M. and 6 P. M.
5. At Forty-tenth street and Eleventh avenue, not less than one watchman or flagman at all hours of the day and night.
6. At Forty-second street and Eleventh avenue, not less than two watchmen or flagmen at all hours of the day and night.
7. At Forty-third street and Eleventh avenue, not less than one watchman or flagman at all hours between 7 A. M. and 10 P. M.

8. At Forty-sixth street and Eleventh avenue, not less than one watchman or flagman at all hours between 7 A. M. and 10 P. M.

9. At Forty-seventh street and Eleventh avenue, not less than one watchman or flagman at all hours between 7 A. M. and 10 P. M.

10. At Forty-eighth street and Eleventh avenue, not less than one watchman or flagman at all hours between 7 A. M. and 10 P. M.

11. At Forty-ninth street and Eleventh avenue, not less than one watchman or flagman from 10 A. M. to 10 P. M.

12. At Fifteenth street and Eleventh avenue, not less than one watchman or flagman at all hours of the day and night.

13. At Fifty-first street and Eleventh avenue, from May 1st to November 1st in each and every year, not less than one watchman or flagman between the hours of 10 A. M. and 10 P. M.

14. At Fifty-second street and Eleventh avenue, not less than one watchman or flagman at all hours of the day and night.

15. At Fifty-third street and Eleventh avenue, from May 1st to November 1st in each and every year, not less than one watchman or flagman at all hours of the day and night.

16. At Fifty-fourth street and Eleventh avenue, from May 1st to November 1st in each and every year, not less than one watchman or flagman at all hours of the day and night.

17. At Fifty-ninth street and Eleventh avenue, not less than one watchman or flagman between the hours of 7 A. M. and 6 P. M.

*And it is further Ordered*, That the provisions of this order shall take effect not later than August 20, 1908, and they shall be continued in force for a period of two years.

*And it is further ordered*, That the New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District within three days after the service of this order upon it, whether the terms of this order are accepted and will be obeyed.

#### HEARING ORDER No. 697.

In respect to changes in Final Order No. 659.

August 27, 1908.

*It is hereby ordered*, That a hearing be had on the 28th day of August, 1908, at 4 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, appliances, equipment and service of the New York Central and Hudson River Railroad Company, in respect to the transportation of persons and property in the First District, are unreasonable, unsafe, improper or inadequate as hereinafter set forth, and whether changes, additions and improvements thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of persons and property, and to determine whether a change, addition and improvement in the regulations, practices, equipment, appliances and service of the said company as hereinafter set forth are such as will be just, reasonable, safe, adequate and proper and ought reasonably to be made, that is to say:

1. Whether the New York Central and Hudson River Railroad Company should be directed to increase the number of flagmen employed at street crossings at and along its tracks on Eleventh avenue, in the city of New York;

2. Whether the hours during which the said flagmen are on duty at said street crossings should be lengthened;

3. Whether Final Order No. 659, directed to the New York Central and Hudson River Railroad Company, and entered and filed in the office of the Public Service Commission for the First District on August 11, 1908, in respect to the service on the Eleventh Avenue line should be abrogated, changed or modified, so as to provide for protection in addition to that provided in Final Order No. 659 by maintaining watchmen or flagmen at the points where the tracks of the New York Central and Hudson River Railroad Company on Eleventh avenue cross Forty-fourth street and Forty-fifth street;

And if any such changes, improvements and additions be found to be such as ought to be made as aforesaid, and if the said Final Order No. 659 is found to be such as should be abrogated, changed or modified, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said New York Central and Hudson River Railroad Company be given at least one day's notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing the said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held August 28th.

588 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

The following final order was issued:

FINAL ORDER No. 707.

August 28, 1908.

This matter coming on upon the report of the hearing had herein on August 28, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, No. 697, made August 27, 1908, and returnable August 28, 1908, and that said order was duly served upon the New York Central and Hudson River Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on August 28, 1908, before Mr. Commissioner Eustis, presiding; Arthur DuBois, Esq., appearing for the Commission, and C. C. Paulding, Esq., appearing for the railroad company, and proof having been taken, and it appearing after the said hearing that the tracks of the New York Central and Hudson River Railroad Company at Eleventh avenue are at certain places insufficiently protected, and that the regulations, practices, service and equipment of the New York Central and Hudson River Railroad Company, in respect to transportation of persons and property on its Eleventh Avenue tracks, has been and is in certain particulars unsafe, unreasonable, improper and inadequate, and it further appearing that an order of this Commission entitled "Final Order No. 659," was made and entered on August 11, 1908, requiring protection at certain cross streets, and that the said final order did not provide for protection at the track crossings at Eleventh avenue and Forty-fourth street and at Eleventh avenue and Forty-fifth street, and it being the judgment of the Commission that the said Final Order No. 659, made August 11, 1908, should be changed so as to provide protection at the Forty-fourth and Forty-fifth Street crossings;

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
Ordered, That Order No. 659, made August 11, 1908, be, and the same hereby is, changed and modified to read as follows:

FINAL ORDER No. 659.

This matter coming on upon the report of the hearing had herein on July 29, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made July 21, 1908, and returnable on July 29, 1908, and that said order was duly served upon the New York Central and Hudson River Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in the said order specified on July 29, 1908, and by adjournment duly had on August 5, 1908, before Mr. Commissioner Eustis, presiding; Arthur DuBois, Esq., appearing for the Commission, and A. S. Lyman, Esq., appearing for the railroad company at both said sessions, and proof having been taken, and it appearing after the said hearing that the tracks of the New York Central and Hudson River Railroad Company on Eleventh avenue are at certain places insufficiently protected, and that the regulations, practices, service and equipment of the New York Central and Hudson River Railroad Company, in respect to the transportation of persons and property on its Eleventh Avenue tracks, has been and is in certain respects unsafe, unreasonable, improper and inadequate because of the fact that certain street crossings are insufficiently protected, and it further appearing that changes, improvements and additions ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public or of the railroad employees, and it being the judgment of the Commission that the changes, additions and improvements in the regulations, equipment, appliances and service of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper and ought reasonably to be made in order to promote the security and convenience of the public and employees of the said railroad company;

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
Ordered, That the New York Central and Hudson River Railroad Company main-  
tain at the times and in the places below specified watchmen or flagmen whose ser-  
vices shall be exclusively devoted to the protection of the public at the street cross-  
ings below named for at least the hours below specified:

1. At Thirty-fourth street and Eleventh avenue, at least one watchman or flag-  
man at all hours of the day and night.
2. At Thirty-fifth street and Eleventh avenue, at least one watchman or flag-  
man at all hours of the day and night.
3. At Thirty-seventh street and Eleventh avenue, at least one watchman or flag-  
man at all hours between 7 A. M. and 6 P. M.
4. At Thirty-eighth street and Eleventh avenue, at least one watchman or flag-  
man at all hours between 7 A. M. and 6 P. M.
5. At Forty-fifth street and Eleventh avenue, at least one watchman or flagman at  
all hours of the day and night.
6. At Forty-second street and Eleventh avenue, at least two watchmen and flag-  
men at all hours of the day and night.
7. At Forty-third street and Eleventh avenue, at least one watchman or flag-  
man at all hours between 7 A. M. and 10 P. M.
8. At Forty-fourth street and Eleventh avenue, at least one watchman or flag-  
man at all hours between 7 A. M. and 8 P. M.

9. At Forty-fifth street and Eleventh avenue, at least one watchman or flagman at all hours between 7 A. M. and 6 P. M.
10. At Forty-sixth street and Eleventh avenue, at least one watchman or flagman at all hours between 7 A. M. and 10 P. M.
11. At Forty-seventh street and Eleventh avenue, at least one watchman or flagman at all hours between 7 A. M. and 10 P. M.
12. At Forty-eighth street and Eleventh avenue, at least one watchman or flagman at all hours between 7 A. M. and 10 P. M.
13. At Forty-ninth street and Eleventh avenue, at least one watchman or flagman from 10 A. M. to 10 P. M.
14. At Fiftieth street and Eleventh avenue, at least one watchman and flagman at all hours of the day and night.
15. At Fifty-first street and Eleventh avenue, from May 1st to November 1st in each and every year, at least one watchman or flagman between the hours of 10 A. M. and 10 P. M.
16. At Fifty-second street and Eleventh avenue, at least one watchman or flagman at all hours of the day and night.
17. At Fifty-third street and Eleventh avenue, from May 1st to November 1st in each and every year, at least one watchman or flagman at all hours of the day and night.
18. At Fifty-fourth street and Eleventh avenue, from May 1st to November 1st in each and every year, at least one watchman or flagman at all hours of the day and night.
19. At Fifty-ninth street and Eleventh avenue, at least one watchman or flagman between the hours of 7 A. M. and 6 P. M.

*And it is further ordered,* That the provisions of this order shall take effect not later than September 1, 1908, and they shall be continued in force for a period of two years.

*And it is further ordered,* That the New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District on or before September 1, 1908, whether the terms of this order are accepted and will be obeyed.

### South Brooklyn Railway Company.— Safety precautions at Van Sicklen station, Culver line.

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, equipment, practices, appliances and service of the SOUTH BROOKLYN RAILWAY COMPANY.

HEARING ORDER  
No. 623.  
July 7, 1908.

"Safety Precautions at Van Sicklen Station, Culver Line."

*It is hereby Ordered,* That a hearing be had on the 29th day of July, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the South Brooklyn Railway Company, upon or near its Culver Line in the vicinity of the Van Sicklen station in the borough of Brooklyn, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate; and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper and whether such changes shall be put in force, observed and used on the line of said company; and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following ought reasonably to be made, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers, freight or property; namely:

Whether said South Brooklyn Railway Company should be directed to provide and maintain additional safety precautions upon its Culver Line in the vicinity of the Van Sicklen station on the curve which begins just north of the station platform.

Whether said company should be directed to make other changes in its property, equipment or appliances, or in its regulations, practices and service upon said line at any of said points of grade crossing;

And if such change, improvement and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said South Brooklyn Railway Company be given at least ten days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinabove set forth.

Hearings held July 29th and August 4th.

**Staten Island Rapid Transit Railway Company.—Safety devices at crossings.**

Rehearing Order No. 195.  
Opinion of Commissioner McCarroll.  
Final Order No. 217.  
Extension Order No. 523.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and equipment of the STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY.

ORDER FOR REHEARING  
No. 195.  
January 10, 1908.

Matter of rehearing on matters contained in Order No. 175 entered December 27, 1907.

An order having been made and filed herein December 27, 1907, No. 175, under and pursuant to an order for hearing made November 8, 1907, No. 78, and thereafter having been duly served upon the Staten Island Rapid Transit Railway Company, the same to take effect immediately and in and by the said order the said Staten Island Rapid Transit Railway Company having been required to notify this Commission before January 10, 1908, whether the terms of said Order No. 175 are accepted and will be obeyed, and the said Staten Island Rapid Transit Railway Company having, on January 6, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in the said Order No. 175, and sufficient reason for said rehearing being made to appear,

*Ordered*, That said request for rehearing be granted and that said rehearing upon the matters contained in said Order No. 175, entered and filed on December 27, 1907, be held on the 16th day of January, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts including those arising since the making of the Order No. 175 whether the original Order No. 175, or any part thereof, is in any respect unjust or unwarranted, and whether the said Order No. 175 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said Staten Island Rapid Transit Railway Company be given at least five days' notice of such rehearing by service upon it either personally or by mail, of a certified copy of this order and that at such hearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Dated, New York, January 10, 1908.

Hearings were held January 16th and 20th.

## OPINION OF COMMISSION.

(Adopted January 24, 1908.)

## COMMISSIONER McCARROLL:—

The application for rehearing was made in form exactly similar to that in the Staten Island Railway matter. The principal changes made after the rehearing in this matter have been a modification of the terms of the order in regard to bells and signals on the North Shore Division. Mr. McLimont, Electrical Engineer to the Commission, personally examined every crossing on this division and found, I think, that each crossing, with two exceptions, was completely planked and guarded by a flagman. Upon his advice, it appears that owing to the nature of the villages crossed by this railroad, the protection by the flagman was sufficient, and that warning bells would probably be a useless annoyance to the neighboring residents. All the principal crossings were guarded by gates, as well as by a flagman, and for this reason the new order simply specifies additional bells for two crossings, additional signs for nine crossings and double-arm gates for one crossing. The same changes in the recitals and dates of the order have been made as reported in the order on the Staten Island Railway.

Thereupon the following final order was issued:

## ORDER No. 217 MADE AFTER REHEARING.

January 24, 1908.

This matter coming on upon the report of the rehearing of Order No. 175 had herein on the 16th day of January, 1908, and it appearing that the said rehearing was held by and pursuant to an order of this Commission, dated January 10, 1908, and numbered 195, and returnable on the 16th day of January, 1908, and that the said order was duly served upon the Staten Island Rapid Transit Railway Company, and that the said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on January 16, 1908, and by adjournment duly had on January 20, 1908, before Commissioner McCarron, presiding; Joseph P. Cotton, Esq., appearing for the Staten Island Rapid Transit Company, and Arthur DuBois, Esq., for the Commission, and the said Staten Island Rapid Transit Railway Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses, and having waived its right so to do, and having announced that it had no evidence to offer;

Now, after the proceedings upon said rehearing, and after consideration of the facts, including those arising since the making of the order, the Commission being of opinion that the original Order No. 175, for the improvement in and addition to the equipment and service of the Staten Island Rapid Transit Railway Company should be changed and modified in certain particulars,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is Ordered, That the Order No. 175, issued December 27, 1907, and directed to the improvement in and additions to the equipment and service of the Staten Island Rapid Transit Railway Company be, and the same is, changed and modified to read as follows:

## ORDER No. 175.

This matter coming on upon the report of the hearing had herein on the 22d day of November, 1907, and it appearing that the said hearing was held by and pursuant to an order of this Commission, made November 8, 1907, and returnable on the 22d day of November, 1907, and that the said order was duly served upon the Staten Island Rapid Transit Railway Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified, on November 22, 1907, before Commissioner McCarron, presiding; Abel E. Blackmar, Esq., appearing for the Commission; Joseph P. Cotton, Esq., appearing for the Staten Island Rapid Transit Railway Company, and by adjournment duly had on November 28, 1907, and by adjournment duly had on December 3, 1907, and by adjournment duly had on December 10, 1907, at all of which adjourned sessions Arthur DuBols, Esq., appearing for the Commission, and Joseph P. Cotton, Esq., appearing for the railways; Mr. Commissioner Eustis presiding at the session of December 3, 1907, and Mr. Commissioner McCarron presiding at all other adjourned sessions, and proof having been taken at all of said sessions;

Now, the Commission being of the opinion, after the proceedings upon said hearing, that the regulations, practices, equipment, appliances and service of the Staten Island Rapid Transit Railway Company in respect to transportation of persons in the First District have been and are in certain particulars unsafe, unreasonable, improper and inadequate, and in the judgment of the Commission certain changes, improvements and additions thereto being such as ought reasonably to be made, in the manner below set forth, in order to promote the security or convenience of the public, or of its employees, or in order to secure adequate service and facil-

ties for the transportation of passengers, and it being the judgment of the Commission that the changes, additions and improvements in regulations, equipment, appliances and service of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper and ought reasonably to be made to promote the security and convenience of the public and employees;

Therefore, on motion of Abel E. Blackmar, Esq., counsel to the Commission, it is  
 Ordered: 1. That the Staten Island Rapid Transit Railway Company adopt the following precautions and install and maintain the following appliances for the better protection of its employees and the public.

A. BELLS AND SIGNALS. That the company provide and maintain at least one electrically operated warning bell at the grade crossing on the North Shore division at Morning Star road and at Central avenue.

The provisions of this subdivision to be complied with not later than March 15, 1908.

B. WARNING SIGNS. At Snug Harbor, a suitable sign to be installed, warning the engineer of trains approaching in either direction of the crossing to the coal dock and freight platform of Sailors' Snug Harbor:

At Broadway, Maple avenue, Elm street, Sharpe avenue, John street, suitable street crossing signs.

At Nicholas street, signs for both sides of the track, the sign now in place to be repaired.

At Maple avenue, St. Mary's avenue, suitable street crossing signs.

Chestnut avenue sign to be put in good repair.

The provisions of this subdivision to be complied with not later than February 20, 1908.

C. GATES. That the Staten Island Rapid Transit Railway Company install, maintain and operate at all regular hours of traffic, over the company's tracks, suitable double arm gates, at the Broadway crossing, Port Richmond.

The provisions of this subdivision to be complied with not later than March 15, 1908.

D. LAMPS AND LIGHTING. That the Staten Island Rapid Transit Railway Company install, maintain and use new lamps of the so-called "Belgian" station lamp type or other suitable lamp of at least equal candle power to the lamp produced by the Staten Island Rapid Transit Railway Company at the hearing before the Commission, in sufficient numbers adequately to light the stations and platforms at New Brighton, Snug Harbor, Livingston, West New Brighton, Port Richmond, Elm Park, Tompkinsville, Stapleton.

The provisions of this subdivision to be complied with not later than February 15, 1908.

2. That all passenger cars used by the Staten Island Rapid Transit Railway Company be adequately lighted.

The provisions of this subdivision to take effect at once.

3. TRAIN SCHEDULES. That all trains operated by the Staten Island Rapid Transit Railway Company, either on the North Shore or South Shore divisions, connect at St. George with boats of the Municipal ferry.

The provisions of this section to take effect not later than January 25, 1908.

4. SMOKE AND NOISE. That the Staten Island Rapid Transit Railway Company prohibit and take all necessary steps to prevent all unnecessary and unreasonable noises and smoke nuisances from engines or shops which it owns or controls at Clifton and St. George or at any other point or points where engines run or are allowed to stand.

That all labor on Sunday, by or for the company, be prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

The provisions of this section to take effect immediately.

And it is further ordered, That this order shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission, in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to expiration of said period of two years.

And it is further ordered, That before January 28, 1908, the said Staten Island Rapid Transit Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following order extending the time for compliance with the foregoing order was issued:

#### EXTENSION ORDER No. 528.

May 22, 1908.

An order, No. 217, having been made herein on or about the 24th day of January, 1908, ordering and directing the Staten Island Rapid Transit Railway Company to install warning signs at certain crossings therein mentioned, not later than February 20, 1908, and said company having applied in writing on May 16, 1908, for an extension of such time;

Now, on motion made and duly seconded, it is

Ordered, That the time of the Staten Island Rapid Transit Railway Company within which to do the work above mentioned, be, and the same hereby is, extended to and including the 15th day of June, 1908.

**Staten Island Railway Company.— Safety devices at crossings.**

Rehearing Order No. 194.  
 Opinion of Commissioner McCarroll.  
 Final Order No. 216.  
 Extension Order No. 522.  
 Extension Order No. 858.

In the Matter  
 of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and equipment of the **STATEN ISLAND RAILWAY COMPANY**.

ORDER FOR  
 REHEARING No. 194.  
 January 10, 1908.

Matter of rehearing on matters contained in order 174 entered December 27, 1907.

An order having been made and filed herein December 27, 1907, No. 174, under and pursuant to an order for hearing made November 8, 1907, No. 77, and thereafter having been duly served upon the Staten Island Railway Company, the same to take effect immediately, and in and by the said order the said Staten Island Railway Company having been required to notify this Commission before January 10, 1908, whether the terms of said Order No. 174 are accepted and will be obeyed, and the said Staten Island Railway Company having, on January 6, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in the said Order No. 174, and sufficient reason for said rehearing being made to appear.

*Ordered*, That said request for rehearing be granted and that said rehearing upon the matters contained in said Order No. 174, entered and filed on December 27, 1907, be held on the 16th day of January, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts including those arising since the making of the order, No. 174, whether the original order No. 174, or any part thereof, is in any respect unjust or unwarranted, and whether the said Order No. 174 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Staten Island Railway Company be given at least five days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held January 16th and 20th.

## OPINION OF COMMISSION.

(Adopted January 24, 1908.)

## COMMISSIONER MCCARROLL:—

The railway company, by its attorney, objected to the clause in the order requiring two automatic bells to be installed at each double track crossing. It also called attention to the misnaming of one street and to the fact that protection was ordered at some crossings which were practically impassable to teams.

In a conference with the counsel for the railway, it appeared that the provision as to placing two automatic bells at every double track crossing had been misunderstood by him. It seems that he had understood the order to require two complete sets of track instruments, whereas the order plainly called for two bells only, to be rung by one set of track instruments. After conferring with Mr. McLimont, electrical engineer, it was decided to change the form of the order, No. 174, section 1, subdivision A, so that instead of calling for two bells at *every double track crossing*, a provision should be made for two bells at certain named crossings,

to be specified after a further complete examination by Mr. McLimont. Six such crossings were named by Mr. McLimont after his further examination of the premises. A further paragraph was inserted in the same subdivision calling for at least one bell at all grade crossings of macadamized roads not guarded by gates or watchmen, and also at certain specified roads that were not macadamized. Seven of these country roads were specified by Mr. McLimont. The object of the changes in this section was to avoid the direction in general terms of certain precautions at "all grade crossings," as it appeared that in that part of Staten Island through which the railway runs there has been a recent real estate development that has resulted in the laying out upon the map of a very great number of roads that are shown in the new 1907 Atlas of Staten Island as opened roads, but which, as a matter of fact, are never used and hardly recognizable as roads. By restricting the order to roads which were macadamized, and to certain additional country roads, the order is made more definite and is restricted to roads actually used.

Subdivision C of the same section has been slightly modified, the result being that on eleven specified crossings the planking is to extend the full width of the driveway and the full distance between the rails. A paragraph is added directing that at all grade crossings of macadamized roads, and at six specified grade crossings of country roads, the planking is to extend the full distance between the rails, but need not extend the full width of the driveway, provided that in all cases it shall be wide enough for two vehicles to pass each other on it with ease. The present order also requires that at all crossings not covered by the two previous subdivisions there shall be at least a guard plank outside of each outer rail, the intervening space to be well packed with macadam, stone, gravel or cinders.

In the recitals of the new order the expression "has been and is unsafe, unreasonable, improper and inadequate," has been changed to read "*is in certain particulars unsafe,*" etc.

Except for unimportant changes in dates upon which the order is to take effect, and certain small changes in the form of the recitals, which are recommended by counsel, there is no further change in the order.

Thereupon the following final order was issued:

**ORDER No. 216, MADE AFTER REHEARING.**  
January 24, 1908.

This matter coming on upon the report of the rehearing of Order No. 174 had herein on the 16th day of January, 1908, and it appearing that the said rehearing was held by and pursuant to an order of this Commission, dated January 10, 1908, and numbered 194, and returnable on the 16th day of January, 1908, and that the said order was duly served upon the Staten Island Railway Company, and that the said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified, on January 16, 1908, and by adjournment duly had on January 20, 1908, before Commissioner McCarroll, presiding, Joseph P. Cotton, Esq., appearing for the Staten Island Railway Company, and Arthur DuBois, Esq., for the Commission, and the said Staten Island Railway Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses, and having waived its right so to do, and having announced that it had no evidence to offer.

Now after the proceedings upon said rehearing, and after consideration of the facts, including those arising since the making of the order, the Commission being of opinion that the original order No. 174, for the improvement in and additions to the equipment and service of the Staten Island Railway Company should be changed and modified in certain particulars,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered*, That the order No. 174, issued December 27, 1907, and directed to the improvement in and additions to the equipment and service of the Staten Island Railway Company be and the same is changed and modified to read as follows:

**ORDER No. 174.**

This matter coming on upon the report of the hearing had herein on the 22d day of November, 1907, and it appearing that the said hearing was held by and pursuant to an order of this Commission, made November 8, 1907, and returnable on the 22d day of November, 1907, and that the said order was duly served upon the Staten Island Railway Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified, on November 22, 1907, before Commissioner McCarroll, presiding, Abel E. Blackmar, Esq., appearing for the Commission, Joseph

P. Cotton, Esq., appearing for the Staten Island Railway Company, and by adjournment duly had on November 26, 1907, and by adjournment duly had on December 3, 1907, and by adjournment duly had on December 10, 1907, at all of which adjourned sessions Arthur DuBols, Esq., appearing for the Commission, and Joseph P. Cotton, Esq., appearing for the Staten Island Railway Company, Mr. Commissioner Eustis presiding at the hearing of December 3, 1907, and Mr. Commissioner McCarroll presiding at all other adjourned sessions, and proof having been taken at all of said sessions,

Now, the Commission being of the opinion, after the proceedings upon said hearing, that the regulations, practices, equipment, appliances and service of the Staten Island Railway Company in respect to transportation of persons in the First District have been and are in certain particulars unsafe, unreasonable, improper and inadequate, and in the judgment of the Commission certain changes, improvements and additions thereto being such as ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or of its employees, or in order to secure adequate service and facilities for the transportation of passengers, and it being the judgment of the Commission that the changes, additions and improvements in regulations, equipment, appliances and service of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper, and ought reasonably to be made to promote the security and convenience of the public and employees,

Therefore, on motion of Abel E. Blackmar, Esq., counsel to the Commission, it is

**Ordered:**

I. That the Staten Island Railway Company adopt the following precautions and install, at or near grade crossings, and maintain the following appliances for the better protection of its employees and the public:

**(A) BELL AND SIGNALS.**

At the following crossings, the company shall provide and maintain two automatic, electrically operated warning bells, one on each side of the track and diagonally opposite to each other, so that both bells at each crossing shall be rung by every train passing that crossing:

Tompkins avenue, Clifton; Amboy road, near Huguenot; Church street, Totten-ville; Amboy road, near Great Kills; Amboy road, near Pleasant Plains; East Broadway, Tottenville.

At all other grade crossings of macadamized roads not guarded by gates or watchmen and also at all the grade crossings named below, the company shall maintain at least one electrically operated warning bell so arranged that it shall be rung by every train passing that crossing.

Burgher avenue, Liberty avenue, Jefferson avenue, Franklin avenue, Colfax avenue, Tysons Lane, Bridge avenue.

Nothing in this order shall be construed to authorize the removal of any warning bells now in use, and no such warning bells shall be removed unless other bells of equal efficiency be substituted. The company shall test all bells at least once daily, in the morning, reports of such tests to be regularly made and promptly filed at the principal operating office of the company.

The provisions of this subdivision A to be completed not later than March 15, 1908.

**(B) WARNING SIGNS.**

At every grade crossing where double tracks occur, warning signs shall be properly located and maintained, one on either side of the track and diagonally opposite each other, and where one track only occurs, one such sign shall be properly located and maintained.

The provisions of this subdivision to be completed not later than February 20, 1908.

**(C) PLANKING.**

Each of the following crossings shall be planked for the full width between the rails and have one 12-inch guard plank outside of each outer rail. Such planking to extend across the full width of the driveway.

Tompkins avenue, Clive avenue, Old Town road, Colfax avenue, Amboy road, Church street, Tottenville; Amboy road, Great Kills; Annadale road; Amboy road, Huguenot; Amboy road, Pleasant Plains; Richmond Valley road.

All other grade crossings of macadamized roads and also all the grade crossings named below shall be planked for the full width between the rails and have one 12-inch guard plank outside of each outer rail. Such planking is to extend across the driveway far enough to allow two vehicles to pass each other on it with ease. The crossing at all times to be maintained in first-class condition:

Burgher avenue, Concord; Liberty avenue, Colfax avenue, Bridge avenue, Jefferson avenue, Tysons avenue.

All other crossings of public highways not planked for the full distance between the rails shall have at least one 12-inch guard plank on each side of all rails for the full width of the driveway, and the space between the guard plank shall be kept evenly graded to the top of the rails and solidly packed with macadam stone or gravel or cinders. The crossing at all times to be maintained in first-class condition.

The provisions of this subdivision to be completed not later than April 1, 1908.

**(D) GATES.**

At the Lincoln avenue crossing in Grant City, a single-arm gate or bar shall be installed and a flagman shall be kept on duty at this point to operate it during the months from May 1st to October 1st.

The provisions of this subdivision to be completed not later than May 1, 1908.

(E) FLAGMEN.

That a flagman shall be stationed at the grade crossing on Tyroll street, Tottenville, to remain on duty during all hours in which trains are scheduled to cross these tracks.

The provisions of this subdivision to be complied with not later than May 1, 1908.

II. That all trains be so run as to connect with the municipal ferry boats to St. George.

The provisions of this section to take effect immediately.

III. SMOKE AND NOISE.

That the Staten Island Railway Company prohibit and take all necessary steps to prevent all unnecessary and unreasonable noises and smoke nuisances from engines or shops which it owns or controls at Clifton, St. George or Tottenville, or at any other point or points where engines run or are allowed to stand.

That all labor on Sunday, by or for the company, be prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is useful during the day for the good order, health and comfort of the community.

The provisions of this section to take effect immediately.

IV. LAMPS AND LIGHTING.

That the Staten Island Railway Company install, use and keep in good condition a sufficient number of new lamps of the so-called "Belgium" station lamp type, or other suitable lamps of at least equal candle power, similar to the lamp exhibited to the Commission at the hearing, adequately to light the stations and platforms at the following places:

Tottenville, Richmond Valley, Huguenot, Annadale, Pleasant Plains, Great Kills, New Dorp, Grant City, Dongan Hills, Goshen.

The provisions of this section to be complied with as soon as possible and not later than April 1, 1908.

V. That the following additions, changes and readjustment of service and time schedules be put in effect without unnecessary delay, but not later than February 15, 1908.

(A) By running a train not less than three cars to leave Tottenville daily, except on Sundays and holidays, between trains shown as No. 3 and No. 5 on official time table, dated October 14, 1907, such train to run to St. George, making all stops between Tottenville and Goshen, except that the stop at Whitlock may be on flag signal, the train to reach St. George in time to connect with the 7:30 boat from St. George.

(B) By running an additional train to leave St. George daily, except Sundays and holidays, between trains No. 34 and No. 36, shown on official time table dated October 14, 1907, said train to leave after arrival of municipal ferry boat leaving Manhattan at 7:00 P. M. and to make all stops to Tottenville.

(C) By running an additional train to leave St. George after the arrival of the municipal ferry boat which leaves Manhattan at 12 o'clock midnight and to make all stops, regular or on signal, to Tottenville.

And it is further ordered, That this order shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission, in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years.

And it is further ordered, That before January 28, 1908, the said Staten Island Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application made by the company the following extension orders were issued:

EXTENSION ORDER No. 522.

May 22, 1908.

An order, No. 216, having been made herein on or about the 24th day of January, 1908, ordering and directing the Staten Island Railway Company, not later than April 1, 1908, to plank certain crossings therein mentioned, and said Staten Island Railway Company having applied in writing on May 16, 1908, for an extension of such time,

Now, on motion made and duly seconded, it is

Ordered, That the time of the Staten Island Railway Company within which to do the work above mentioned, be and the same hereby is, extended to and including the 15th day of June, 1908.

EXTENSION ORDER No. 858.

November 24, 1908.

An order, No. 216, having been made herein on or about the 24th day of January, 1908, ordering and directing the Staten Island Railway Company, in paragraph (C), to plank certain crossings therein mentioned not later than April 1, 1908, and said time within which to comply with said section (C) of Order No. 216 having

been extended to and including June 15, 1908, and said company having on November 10, 1908, applied in writing for a further extension of such time.

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Staten Island Railway Company shall comply with section (C) of said Order No. 218 be, and the same hereby is, extended to and including the 31st day of December, 1908.

## PROCEEDINGS BASED MAINLY ON NUMBER OF CARS OPERATED.

**Brooklyn City Railroad Company.**— Service on Third avenue surface line.

COMPLAINT OF GEORGE FOX

against

BROOKLYN CITY RAILROAD COMPANY.

Complaint Order No. 277 (see form, note 1) issued February 21st.

**Brooklyn Heights Railroad Company.**— Failure to operate cars on Nassau Avenue line from midnight to 5 A. M.

COMPLAINT OF THE BOARD OF ALDERMEN

against

BROOKLYN HEIGHTS RAILROAD COMPANY.

Complaint Order No. 297 (see form, note 1) issued March 3d.

The company answered stating that there was practically no traffic offered to south-bound trains between the hours named, but there seemed to be some demand for north-bound service for which arrangement would be made.

**Brooklyn Heights Railroad Company.**— Increase of service on Flatbush-Seventh avenue line.

In the Matter  
of the

Hearing on the Motion of the Commission  
on the Question of Improvements in and Additions  
to the Service and Equipment of the  
BROOKLYN HEIGHTS RAILROAD COMPANY,  
in respect to the Flatbush-Seventh Avenue Line.

ORDER FOR HEARING  
ORDER No. 872  
March 27, 1908.

*It is hereby ordered that a hearing be had on the 8th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire whether the regulations, equipment, appliances and service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the First District, are unjust, unreasonable, improper and inadequate, and whether the said company runs cars enough or with sufficient frequency or possesses or operates motive power enough reasonably to accommodate the passenger traffic transported by it or offered for transportation to it and if such be found not to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported*

or offered for transportation and is and will be just, reasonable, proper and adequate to direct that the service of the said Brooklyn Heights Railroad Company on its Flatbush-Seventh avenue line be increased and supplemented at the points and times and in the particulars following, that is to say:

(a) *Westbound*, leaving Seventh avenue and Twentieth street.

1. Between 6:45 and 7:15 A. M., by an increase of 1 car in the Fulton Ferry service, making a total service of 7 cars, i. e., 3 to Fulton Ferry and 4 to City Hall.
2. Between 7:15 and 7:45 A. M., by an increase of 1 car in the Fulton Ferry service, and 2 cars in the City Hall service, making a total service of 9 cars, i. e., 3 to Fulton Ferry and 6 to City Hall.
3. Between 7:45 and 8:15 A. M., by an increase of 1 car in the Fulton Ferry service and 3 cars in the City Hall service, making a total service of 12 cars, i. e., 4 to Fulton Ferry and 8 to City Hall.
4. Between 8:15 and 8:45 A. M., by an increase of 2 cars in the Fulton Ferry service and 4 cars in the City Hall service, making a total service of 12 cars, i. e., 4 to Fulton Ferry and 8 to City Hall.
5. Between 8:45 and 9:15 A. M., by an increase of 2 cars in the City Hall service, making a total service of 10 cars, i. e., 4 to Fulton Ferry and 6 to City Hall.
6. Between 9:15 and 9:45 A. M., by an increase of 1 car in the Fulton Ferry service and 2 cars in the City Hall service, making a total service of 8 cars, i. e., 4 to Fulton Ferry and 4 to City Hall.
7. Between 9:45 and 10:15 A. M., by an increase of 4 cars in the City Hall service, making a total service of 9 cars, i. e., 4 to Fulton Ferry and 5 to City Hall.
8. Between 10:15 and 10:45 A. M., by an increase of 3 cars in the City Hall service, making a total service of 7 cars, i. e., 4 cars to Fulton Ferry and 3 cars to City Hall.
9. Between 10:45 and 11:15 A. M., by an increase of 3 cars in the City Hall service, making a total of 7 cars, i. e., 4 to Fulton Ferry and 3 to City Hall.
10. Between 11:15 and 11:45 A. M., by an increase of 1 car in the City Hall service, making a total service of 5 cars, i. e., 4 to Fulton Ferry and 1 to City Hall.
11. Between 12:45 and 1:15 P. M., by an increase of 2 cars in the City Hall service, making a total service of 6 cars, i. e., 4 to Fulton Ferry and 2 to City Hall.
12. Between 1:15 and 1:45 P. M., by an increase of 3 cars in the City Hall service, making a total service of 8 cars, i. e., 5 to Fulton Ferry and 3 to City Hall.
13. Between 1:45 and 2:15 P. M., by an increase of 2 cars in the City Hall service, making a total service of 7 cars, i. e., 5 to Fulton Ferry and 2 to City Hall.
14. Between 2:15 and 2:45 P. M., by an increase of 3 cars in the City Hall service, making a total service of 8 cars, i. e., 5 to Fulton Ferry and 3 to City Hall.
15. Between 2:45 and 3:15 P. M., by an increase of 3 cars in the City Hall service, making a total service of 8 cars, i. e., 5 to Fulton Ferry and 3 to City Hall.
16. Between 7:15 and 7:45 P. M., by an increase of 5 cars in the City Hall service, making a total service of 14 cars, i. e., 5 to Fulton Ferry and 9 to City Hall.
17. Between 7:45 and 8:15 P. M., by an increase of 3 cars in the City Hall service, making a total service of 6 cars, i. e., 3 cars to Fulton Ferry and 3 cars to City Hall.

(b) *Eastbound*, leaving City Hall to Seventh avenue and Twentieth street.

18. Between 10:45 and 11:15 A. M., by an increase of 1 car, or by an increase from 4 to 5 cars.
19. Between 11:15 and 11:45 A. M., by an increase of 2 cars, or by an increase from 4 to 6 cars.
20. Between 11:45 A. M. and 12:15 P. M., by an increase of 2 cars, or by an increase from 5 to 7 cars.
21. Between 12:15 and 12:45 P. M., by an increase of 1 car, or by an increase from 6 to 7 cars.
22. Between 12:45 and 1:15 P. M., by an increase of 1 car, or by an increase from 6 to 7 cars.
23. Between 1:15 and 1:45 P. M., by an increase of 1 car, or by an increase from 5 to 6 cars.
24. Between 1:45 and 2:15 P. M., by an increase of 1 car, or by an increase from 5 to 6 cars.
25. Between 2:15 and 2:45 P. M., by an increase of 2 cars, or by an increase from 5 to 7 cars.
26. Between 2:45 and 3:15 P. M., by an increase of 3 cars, or by an increase from 4 to 7 cars.
27. Between 3:15 and 3:45 P. M., by an increase of 3 cars, or by an increase from 6 to 9 cars.
28. Between 3:45 and 4:15 P. M., by an increase of 2 cars, or by an increase from 8 to 10 cars.
29. Between 4:15 and 4:45 P. M., by an increase of 3 cars, or by an increase from 8 to 11 cars.

30. Between 4:45 and 5:15 P. M., by an increase of 4 cars, or by an increase from 8 to 12 cars.  
 31. Between 5:15 and 5:45 P. M., by an increase of 3 cars, or by an increase from 9 to 12 cars.  
 32. Between 5:45 and 6:15 P. M., by no increase, 12 cars were operated.  
 33. Between 6:15 and 6:45 P. M., by an increase of 2 cars, or by an increase from 10 to 12 cars.  
 34. Between 6:45 and 7:15 P. M., by an increase of 2 cars, or by an increase from 9 to 11 cars.  
 35. Between 9:15 and 9:45 P. M., by an increase of 1 car, or by an increase from 3 to 4 cars.  
 36. Between 9:45 and 10:15 P. M., by an increase of 1 car, or by an increase from 3 to 4 cars.  
 37. Between 10:15 and 10:45 P. M., by an increase of 4 cars, or by an increase from 4 to 8 cars.  
 38. Between 10:45 and 11:15 P. M., by an increase of 4 cars, or by an increase from 4 to 8 cars.  
 39. Between 11:15 and 11:45 P. M., by an increase of 4 cars, or by an increase from 4 to 8 cars.

And if any such changes, improvements or additions be found to be such as ought to be made, as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Heights Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, or a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held April 8th, 22d, and 27th.

**Brooklyn Heights Railroad Company.—Inadequate service on Sixteenth avenue line, Brooklyn.**

**COMPLAINT OF THOMAS E. HARTMAN  
AND OTHERS  
against  
THE BROOKLYN HEIGHTS RAILROAD COMPANY.**

Complaint Order No. 425 (see form, note 1) issued April 21st.

**Brooklyn Heights Railroad Company.—Service on Flatbush avenue line.**

Hearing Order No. 347.  
 Final Order No. 434.  
 Rehearing Order No. 458.  
 Final Order No. 504.  
 Rehearing Order No. 564.  
 Final Order No. 610.  
 Rehearing Order No. 662.  
 Final Order No. 684.

In the Matter  
of the  
Hearing on the Motion of the Commission on the  
Question of Improvements in and Additions to  
the Service and Equipment of the BROOKLYN  
HEIGHTS RAILROAD COMPANY in respect to  
the Flatbush Avenue Line.

ORDER No. 347.  
March 17, 1908.

*It is hereby ordered,* That a hearing be had on the 27th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of

400 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Manhattan, city of New York, State of New York, to inquire whether the regulations, equipment, appliances and service of the Brooklyn Heights Railroad Company in respect to transportation of persons in the First District are unjust, unreasonable, improper or inadequate, and whether the said company runs cars enough or with sufficient frequency, or possesses or operates motive power enough reasonably to accommodate passenger traffic transported by it or offered for transportation to it, and if such be found not to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of said Brooklyn Heights Railroad Company on its Flatbush line be increased and supplemented at the points and times and in the particulars following, that is to say:

A.—WESTBOUND.

Leaving depot at Avenue "N" and Forty-eighth street and running at least as far west as City Hall.

1. Between 6:00 and 6:30 A. M., by an increase of 1 car, or by an increase from 5 to 6 cars.
2. Between 6:30 and 7:00 A. M., by an increase of 2 cars, or by an increase from 9 to 11 cars.
3. Between 7:00 and 7:30 A. M., by an increase of 2 cars, or by an increase from 10 to 12 cars.
4. Between 7:30 and 8:00 A. M., by an increase of 5 cars, or by an increase from 11 to 16 cars.
5. Between 8:00 and 8:30 A. M., by an increase of 6 cars, or by an increase from 11 to 17 cars.
6. Between 8:30 and 9:00 A. M., by an increase of 3 cars, or by an increase from 9 to 12 cars.
7. Between 9:00 and 9:30 A. M., by an increase of 4 cars, or by an increase from 8 to 12 cars.
8. Between 9:30 and 10:00 A. M., by an increase of 3 cars, or by an increase from 7 to 10 cars.
9. Between 10:00 and 10:30 A. M., by an increase of 2 cars, or by an increase from 8 to 10 cars.
10. Between 10:30 and 11:00 A. M., by an increase of 1 car, or by an increase from 8 to 9 cars.
11. Between 11:00 and 11:30 A. M., by an increase of 1 car, or by an increase from 7 to 8 cars.
12. Between 12:30 and 1:00 P. M., by an increase of 2 cars, or by an increase from 8 to 10 cars.
13. Between 1:00 and 1:30 P. M., by an increase of 2 cars, or by an increase from 7 to 9 cars.
14. Between 1:30 and 2:00 P. M., by an increase of 1 car, or by an increase from 8 to 9 cars.
15. Between 2:00 and 2:30 P. M., by an increase of 5 cars, or by an increase from 9 to 14 cars.
16. Between 7:00 and 7:30 P. M., by an increase of 2 cars, or by an increase from 10 to 12 cars.
17. Between 7:30 and 8:00 P. M., by an increase of 1 car, or by an increase from 7 to 8 cars.

B.—EASTBOUND.

Leaving City Hall, and running at least as far east as Vanderveer Park (Flatbush and Nostrand avenues).

18. Between 2:15 and 2:45 P. M., by an increase of 2 cars, or by an increase from 6 to 8 cars.
19. Between 2:45 and 3:15 P. M., by an increase of 3 cars, or by an increase from 9 to 12 cars.
20. Between 3:15 and 3:45 P. M., by an increase of 1 car, or by an increase from 11 to 12 cars.
21. Between 3:45 and 4:15 P. M., by an increase of 1 car, or by an increase from 12 to 13 cars.
22. Between 4:15 and 4:45 P. M., by an increase of 3 cars, or by an increase from 13 to 16 cars.
23. Between 4:45 and 5:15 P. M., by an increase of 3 cars, or by an increase from 15 to 18 cars.
24. Between 5:45 and 5:45 P. M., by an increase of 3 cars, or by an increase from 15 to 18 cars.
25. Between 5:45 and 6:15 P. M., by an increase of 4 cars, or by an increase from 14 to 18 cars.
26. Between 6:15 and 6:45 P. M., by an increase of 5 cars, or by an increase from 13 to 18 cars.
27. Between 6:45 and 7:00 P. M., by an increase of 8 cars, or by an increase from 5 to 8 cars.
28. Between 10:15 and 10:45 P. M., by an increase of 4 cars, or by an increase from 6 to 10 cars.
29. Between 10:45 and 11:45 P. M., by an increase of 2 cars, or by an increase from 8 to 10 cars.

And if any such changes, improvements or additions be found to be such as ought to be made, as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Heights Railroad Company be given at least nine days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held March 27th and April 9th.

The following final order was issued:

ORDER No. 434.

April 24, 1908.

This matter coming on upon the report of the hearing had herein on the 27th day of March, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, No. 347, made March 19, 1908, and returnable on the 27th day of March, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on March 27th, 1908, and by adjournment duly had on April 9, 1908, before Mr. Commissioner Bassett, presiding, Arthur H. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, and proof having been taken at both of said sessions.

Now, it being made to appear after the proceedings upon said hearing that the regulations and service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the First District on the Flatbush avenue line has been and is unreasonable, improper and inadequate and that the said Brooklyn Heights Railroad Company does not run cars enough or with sufficient frequency on its Flatbush avenue line reasonably to accommodate the traffic offered for transportation to it and that it will be just, reasonable and proper that said service of the Brooklyn Heights Railroad Company on its Flatbush avenue line should be supplemented in the particulars hereinafter set forth at the points and at the times specified.

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered,* That the service of the Brooklyn Heights Railroad Company on its Flatbush avenue line be changed, increased and supplemented at the points and times and in the particulars following, that is to say, by operating daily except Sundays during the periods mentioned, cars as follows:

A.—WESTBOUND.

Leaving depot at Avenue "N" and Forty-eighth street and running at least as far west as Borough Hall.

1. Between 6:00 and 6:30 A. M., not less than five (5) cars.
2. Between 6:30 and 7:00 A. M., not less than seven (7) cars.
3. Between 7:00 and 7:30 A. M., not less than eleven (11) cars.
4. Between 7:30 and 8:00 A. M., not less than fifteen (15) cars.
5. Between 8:00 and 8:30 A. M., not less than fifteen (15) cars.
6. Between 8:30 and 9:00 A. M., not less than twelve (12) cars.
7. Between 9:00 and 9:30 A. M., not less than ten (10) cars.
8. Between 9:30 and 10:00 A. M., not less than eight (8) cars.
9. Between 10:00 and 10:30 A. M., not less than seven (7) cars.
10. Between 10:30 and 11:00 A. M., not less than eight (8) cars.
11. Between 11:00 and 11:30 A. M., not less than eight (8) cars.
12. Between 12:30 and 1:00 P. M., not less than ten (10) cars.
13. Between 1:00 and 1:30 P. M., not less than ten (10) cars.
14. Between 1:30 and 2:00 P. M., not less than ten (10) cars.
15. Between 2:00 and 2:30 P. M., not less than ten (10) cars.
16. Between 7:00 and 7:30 P. M., not less than ten (10) cars.
17. Between 7:30 and 8:00 P. M., not less than six (6) cars.

B.—EASTBOUND.

Leaving Borough Hall, and running at least as far east as Vanderveer Park (Flatbush and Nostrand avenues).

18. Between 2:15 and 2:45 P. M., not less than ten (10) cars.
19. Between 2:45 and 3:15 P. M., not less than eleven (11) cars.
20. Between 3:15 and 3:45 P. M., not less than eleven (11) cars.
21. Between 3:45 and 4:15 P. M., not less than thirteen (13) cars.
22. Between 4:15 and 4:45 P. M., not less than fourteen (14) cars.
23. Between 4:45 and 5:15 P. M., not less than sixteen (16) cars.
24. Between 5:15 and 5:45 P. M., not less than fifteen (15) cars.
25. Between 5:45 and 6:15 P. M., not less than nineteen (19) cars.
26. Between 6:15 and 6:45 P. M., not less than fifteen (15) cars.
27. Between 6:45 and 7:00 P. M., not less than six (6) cars.
28. Between 10:15 and 10:45 P. M., not less than five (5) cars.
29. Between 10:45 and 11:45 P. M., not less than ten (10) cars.

At all other periods of the day and on Sundays there shall be operated at least the number of cars called for by schedule of March 30, 1908, as supplemented by Patch No. 1, filed with the Public Service Commission.

*And it is further ordered,* That this order shall take effect on May 8, 1908, and shall continue in force for a period of two years from and after the taking effect of the same but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years.

*Further ordered,* That before May 4, 1908, said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

**ORDER FOR REHEARING No. 458.**

May 5, 1908.

An order having been made and filed herein on or about the 24th day of April, 1908, No. 434, under and pursuant to an order for hearing made March 19, 1908, No. 847, and thereafter having been duly served upon the Brooklyn Heights Railroad Company, the same to take effect on May 8, 1908, and in and by said order the said Brooklyn Heights Railroad Company having been required to notify this Commission before May 4, 1908, whether the terms of said order, No. 434, are accepted and will be obeyed, and the said Brooklyn Heights Railroad Company having, on May 1, 1908, applied to this Commission for a rehearing in respect to some of the matters contained in said Order No. 434, and sufficient reason for said rehearing being made to appear:

*Ordered,* That the said request for a rehearing be granted and that such rehearing upon the matters contained in said Order No. 434, entered and filed on April 24, 1908, be held on the 11th day of May, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising since the making of Order No. 434, whether the original Order No. 434 or any part thereof is in any respect unjust, or unwarranted, and whether the said Order No. 434 should, in any respects, be abrogated, changed or modified, and if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of such changes or modifications of the said order and to determine the time of taking effect of the order as changed and modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Heights Railroad Company be given at least five days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing the said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered,* That the time of the said Brooklyn Heights Railroad Company within which to comply with the terms of said Order No. 434, be and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held May 11th.

The following final order was issued:

**FINAL ORDER No. 504, AFTER REHEARING.**

May 19, 1908.

This matter coming on upon the report of the rehearing of Order No. 434 had herein on the 11th day of May, 1908, and it appearing that the said rehearing was held by and pursuant to an order of this Commission dated May 5, 1908, No. 458, and returnable on the 11th day of May, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company and that said service was by it duly acknowledged and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on May 11, 1908, before Mr. Commissioner Bassett presiding, Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company and Arthur DuBois, Esq., appearing for the Commission, and the said Brooklyn Heights Railroad Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses and proof having been taken,

Now, after the proceedings upon said rehearing and after consideration of the facts, including those facts arising since the making of the order, the Commission being of opinion that the original Order No. 434 should be changed and modified in certain particulars,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered*, That Order No. 434 made April 24, 1908, and directed to the improvement  
 in and additions to the service of the Brooklyn Heights Railroad Company in  
 respect to the Flatbush avenue line be and the same hereby is changed and  
 modified to read as follows:

## ORDER No. 434.

This matter coming on upon the report of the hearing had herein on the 27th day of March, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission No. 347, made March 19, 1908, and returnable on the 27th day of March, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on March 27, 1908, and by adjournment duly had on April 9, 1908, before Mr. Commissioner Bassett, presiding, Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, and proof having been taken at both of said sessions,

Now, it being made to appear that the proceedings upon said hearing that the regulations and service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the First District on the Flatbush avenue line has been and is unreasonable, improper and inadequate and that the said Brooklyn Heights Railroad Company does not run cars enough or with sufficient frequency on its Flatbush avenue line reasonably to accommodate the traffic offered for transportation to it and that it will be just, reasonable and proper that said service of the Brooklyn Heights Railroad Company on its Flatbush avenue line should be supplemented in the particulars hereinafter set forth at the points and at the times specified.

Therefore, on motion of George S. Coleman, counsel to the Commission, it is  
*Ordered*, That the service of the Brooklyn Heights Railroad Company on its Flatbush avenue line be changed, increased and supplemented at the points and times and in the particulars following, that is to say, by operating daily except Sundays during the periods mentioned, cars as follows:

## A.—WESTBOUND.

Leaving depot at Avenue "N" and Forty-eighth street or Vanderveer Park and running at least as far west as Borough Hall.

1. Between 6:00 and 6:30 A. M., not less than five (5) cars.
2. Between 6:30 and 7:00 A. M., not less than seven (7) cars.
3. Between 7:00 and 7:30 A. M., not less than eleven (11) cars.
4. Between 7:30 and 8:00 A. M., not less than fifteen (15) cars.
5. Between 8:00 and 8:30 A. M., not less than fifteen (15) cars.
6. Between 8:30 and 9:00 A. M., not less than twelve (12) cars.
7. Between 9:00 and 9:30 A. M., not less than ten (10) cars.
8. Between 9:30 and 10:00 A. M., not less than eight (8) cars.
9. Between 10:00 and 10:30 A. M., not less than seven (7) cars.
10. Between 10:30 and 11:00 A. M., not less than eight (8) cars.
11. Between 11:00 and 11:30 A. M., not less than eight (8) cars.
12. Between 12:30 and 1:00 P. M., not less than ten (10) cars.
13. Between 1:00 and 1:30 P. M., not less than ten (10) cars.
14. Between 1:30 and 2:00 P. M., not less than ten (10) cars.
15. Between 2:00 and 2:30 P. M., not less than ten (10) cars.
16. Between 7:00 and 7:30 P. M., not less than ten (10) cars.
17. Between 7:30 and 8:00 P. M., not less than six (6) cars.

## B.—EASTBOUND.

Leaving Borough Hall, and running at least as far east as Vanderveer Park (Flatbush and Nostrand avenues):

18. Between 2:15 and 2:45 P. M., not less than ten (10) cars.
19. Between 2:45 and 3:15 P. M., not less than eleven (11) cars.
20. Between 3:15 and 3:45 P. M., not less than eleven (11) cars.
21. Between 3:45 and 4:15 P. M., not less than thirteen (13) cars.
22. Between 4:15 and 4:45 P. M., not less than fourteen (14) cars.
23. Between 4:45 and 5:15 P. M., not less than sixteen (16) cars.
24. Between 5:15 and 5:45 P. M., not less than fifteen (15) cars.
25. Between 5:45 and 6:15 P. M., not less than nineteen (19) cars.
26. Between 6:15 and 6:45 P. M., not less than fifteen (15) cars.
27. Between 6:45 and 7:00 P. M., not less than six (6) cars.
28. Between 10:15 and 10:45 P. M., not less than five (5) cars.
29. Between 10:45 and 11:45 P. M., not less than ten (10) cars.

At all other periods of the day except on Sundays there shall be operated at least the number of cars called for by schedule of March 30, 1908, as supplemented by Patch No. 1, filed with the Public Service Commission for the First District.

And it is further ordered, That this order shall take effect on May 26, 1908, and shall continue in force for a period of two years from and after taking effect of the same, without prejudice for an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years, and it is

*Further ordered*, That before May 26, 1908, the said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

REHEARING ORDER No. 564.

June 9, 1908.

An order, No. 504, having been made and filed herein on or about the 19th day of May, 1908, under and pursuant to an order for rehearing, No. 458, made on the 5th day of May, 1908, resettling the terms of Final Order No. 434 made and filed herein on the 24th day of April, 1908, and thereafter said Order No. 504 having been duly served upon the Brooklyn Heights Railroad Company, the same to take effect on the 26th day of May, 1908; and the said Brooklyn Heights Railroad Company having on June 8, 1908, applied in writing to this Commission for a further modification of the terms of said Order No. 434, and to that end requested a second rehearing in respect to some of the matters contained in said Order No. 434 as modified by the terms of said Order No. 504, and sufficient reason for said rehearing being made to appear,

*Ordered*, That the said request for a rehearing be granted and that such rehearing upon the matters contained in said Order No. 504, entered and filed on April 24, 1908, be held on the 18th day of June, 1908, at 4:00 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising since the making of Order No. 504, whether the original Order No. 434, as modified by Order No. 504, should in any respect be further abrogated, changed or modified, and if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of such changes or modifications of the said order and to determine the time of taking effect of the order as changed and modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Brooklyn Heights Railroad Company be given at least six (6) days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing the said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered*, That the time of the said Brooklyn Heights Railroad Company within which to comply with the terms of said Order No. 504, in so far as it relates to Saturday afternoons, be and the same hereby is extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held June 18th.

The following final order was issued:

FINAL ORDER No. 610, AFTER REHEARING.

June 26, 1908.

This matter coming on upon the report of the rehearing of Order No. 504 had herein on June 18, 1908, and it appearing that the said rehearing was held by and pursuant to an order of this Commission No. 504, dated June 9, 1908, and returnable on June 18, 1908, and that the said order was duly served on the Brooklyn Heights Railroad Company, and that said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on June 18, 1908, before Mr. Commissioner Bassett, presiding, Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, and Arthur DuBols, Esq., appearing for the Commission and the said Brooklyn Heights Railroad Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses, and proof having been taken,

Now, after the proceedings upon said rehearing and after consideration of the facts including those facts arising since the making of the order, the Commission being of opinion that Order No. 504 should be changed and modified in certain particulars.

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, That Order No. 504 made May 18, 1908, be and the same hereby is changed and modified to read as follows:

## FINAL ORDER No. 504.

This matter coming on upon the report of the hearing had herein on the 27th day of March, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission No. 347 made March 19, 1908, and returnable on the 27th day of March, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on March 27, 1908, and by adjournment duly had on April 9, 1908, before Mr. Commissioner Bassett, presiding, Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, and proof having been taken at both of said sessions,

Now, it being made to appear after the proceedings upon said hearing that the regulations and service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the First District on the Flatbush avenue line has been and is unreasonable, improper and inadequate and that the said Brooklyn Heights Railroad Company does not run cars enough or with sufficient frequency on its Flatbush avenue line reasonably to accommodate the traffic offered for transportation to it and that it will be just, reasonable and proper that said service of the Brooklyn Heights Railroad Company on its Flatbush avenue line should be supplemented in the particulars hereinafter set forth at the points and at the times specified.

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, That the service of the Brooklyn Heights Railroad Company on its Flatbush avenue line be changed, increased and supplemented at the points and times and in the particulars following, that is to say, by operating during the periods mentioned, cars as follows:

## WESTBOUND.

## A.—Daily except Saturday and Sunday.

Leaving Vanderveer and running at least as far west as Borough Hall.

1. Between 6:00 and 6:30 A. M., not less than five (5) cars.
2. Between 6:30 and 7:00 A. M., not less than seven (7) cars.
3. Between 7:00 and 7:30 A. M., not less than eleven (11) cars.
4. Between 7:30 and 8:00 A. M., not less than fifteen (15) cars.
5. Between 8:00 and 8:30 A. M., not less than fifteen (15) cars.
6. Between 8:30 and 9:00 A. M., not less than twelve (12) cars.
7. Between 9:00 and 9:30 A. M., not less than ten (10) cars.
8. Between 9:30 and 10:00 A. M., not less than eight (8) cars.
9. Between 10:00 and 10:30 A. M., not less than seven (7) cars.
10. Between 10:30 and 11:00 A. M., not less than eight (8) cars.
11. Between 11:00 and 11:30 A. M., not less than eight (8) cars.
12. Between 12:30 and 1:00 P. M., not less than ten (10) cars.
13. Between 1:00 and 1:30 P. M., not less than ten (10) cars.
14. Between 1:30 and 2:00 P. M., not less than ten (10) cars.
15. Between 2:00 and 2:30 P. M., not less than ten (10) cars.
16. Between 7:00 and 7:30 P. M., not less than ten (10) cars.
17. Between 7:30 and 8:00 P. M., not less than six (6) cars.

## EASTBOUND.

## B.—Daily except Saturday and Sunday.

Leaving Borough Hall, and running at least as far east as Vanderveer Park (Flatbush and Nostrand avenues).

18. Between 2:15 and 2:45 P. M., not less than ten (10) cars.
19. Between 2:45 and 3:15 P. M., not less than eleven (11) cars.
20. Between 3:15 and 3:45 P. M., not less than eleven (11) cars.
21. Between 3:45 and 4:15 P. M., not less than thirteen (13) cars.
22. Between 4:15 and 4:45 P. M., not less than fourteen (14) cars.
23. Between 4:45 and 5:15 P. M., not less than sixteen (16) cars.
24. Between 5:15 and 5:45 P. M., not less than fifteen (15) cars.
25. Between 5:45 and 6:15 P. M., not less than nineteen (19) cars.
26. Between 6:15 and 6:45 P. M., not less than fifteen (15) cars.
27. Between 6:45 and 7:00 P. M., not less than six (6) cars.
28. Between 10:15 and 10:45 P. M., not less than five (5) cars.
29. Between 10:45 and 11:45 P. M., not less than ten (10) cars.

C.—By operating on Saturdays during the months of June, July, August and September cars as follows:

A.—MAIN LINE.

Vanderveer Park to Park Row or Borough Hall and return.

From	4:57 to	5:12 A. M.	on 15	min. headway.
From	5:12 to	6:30 A. M.	on 6	" "
From	6:30 to	6:40 A. M.	on 5	" "
From	6:44 to	6:54 A. M.	on 3½	" "
From	6:54 to	7:00 A. M.	on 3	" "
From	7:00 to	7:30 A. M.	on 2½	" "
From	7:30 to	7:52 A. M.	on 1½	" "
From	7:52 to	8:42 A. M.	on 2	" "
From	8:42 to	9:30 A. M.	on 2½	" "
From	9:30 to	10:00 A. M.	on 3	" "
From	10:00 to	11:28 A. M.	on 4	" "
From	11:28 to	12:32 P. M.	on 2	" "
From	12:32 to	6:00 P. M.	on 2½	" "
From	6:00 to	7:34 P. M.	on 3½	" "
From	7:34 to	7:50 P. M.	on 4	" "
From	7:50 to	9:00 P. M.	on 5	" "
From	9:00 to	11:00 P. M.	on 6	" "
From	11:00 to	12:00 P. M.	on 7½	" "
From	12:00 to	12:45 A. M.	on 15	" "
From	12:45 to	2:05 A. M.	on 20	" "
From	2:05 to	2:33 A. M.	on 28	" "
From	2:33 to	4:33 A. M.	on 30	" "

At all other periods of the day except on Sundays and on all Saturdays except in the months of June, July, August and September, there shall be operated at least the number of cars called for by schedule of March 30, 1908, as supplemented by Patch No. 1, filed with the Public Service Commission for the First District.

And it is further ordered, That this order shall take effect on July 6, 1908, and shall continue in force for a period of two years from and after taking effect of the same, without prejudice for an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years, and it is

Further ordered, That before July, 3, 1908, the said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

REHEARING ORDER No. 662.

August 7, 1908.

An order, No. 610, having been made and filed herein on or about the 26th day of June, 1908, on and pursuant to an order for rehearing No. 584 made on the 9th day of June, 1908, resettling the terms of Final Order No. 504 made and filed herein on the 19th day of May, 1908, said Order No. 504 having been a resettlement of the terms of Final Order No. 434 made and filed herein on the 24th day of April, 1908, pursuant to order for rehearing No. 458 made May 5, 1908, and thereafter said Order No. 610 having been served upon the Brooklyn Heights Railroad Company the same to take effect on July 6, 1908, and the said Brooklyn Heights Railroad Company having on July 28, 1908, applied in writing to this Commission for a further modification of the terms of said Order No. 434, and to that end, requested a further hearing in regard to some of the matters contained in said Order No. 434, as modified by the terms of said Order No. 504, and said Order No. 610; and sufficient reason for said rehearing being made to appear.

Ordered, That the said request for a rehearing be granted, and that such rehearing upon the matters contained in said Order No. 504, entered and filed on April 24, 1908, and said Order No. 610, entered and filed on June 26, 1908, be held on the 13th day of August, 1908, at 3:00 o'clock in the afternoon or at any time or times to which the same may be adjourned at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising since the making of Orders Nos. 504 and 610, whether the original Order No. 434, as modified by Orders Nos. 504 and 610, should in any respect be further abrogated, changed, or modified, and if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of such changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further Ordered, That the Brooklyn Heights Railroad Company be given at least five (5) days' notice of such rehearing by service upon it, either personally

# ORDERS OF THE COMMISSION ISSUED IN 1908.

407

or by mail, of a certified copy of this order, and that at such hearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held August 13th.

The following final order was issued:

ORDER No. 684.

August 21, 1908.

This matter coming on upon the report of the rehearing of Order No. 610 had herein on August 13, 1908, and it appearing that said rehearing was held by and pursuant to an order of this Commission, No. 662, dated August 7, 1908, and returnable on August 13, 1908, and that said order was duly served on the Brooklyn Heights Railroad Company, and that said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on August 13, 1908, before Mr. Commissioner McCarroll, presiding, Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, and Arthur Du Bois, Esq., appearing for the Commission, and the said Brooklyn Heights Railroad Company having been afforded reasonable opportunity for presenting evidence and cross-examining witnesses, and proof having been taken;

Now, after the proceedings upon the said rehearing, and after consideration of the facts including those facts arising since the making of the order, the Commission being of opinion that Order No. 610, made June 26, 1908, should be changed and modified in certain particulars,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

Ordered, That Order No. 610, made August 7, 1908, be and the same hereby is changed and modified to read as follows:

## FINAL ORDER No. 610.

This matter coming on upon the report of the hearing had herein on the 27th day of March 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, No. 347, made March 19, 1908, and returnable on the 27th day of March, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on March 27, 1908, and by adjournment duly had on April 9, 1908, before Mr. Commissioner Bassett, presiding, Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, and proof having been taken at both of said sessions.

Now, it being made to appear after the proceedings upon said hearing that the regulations and service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the First District on the Flatbush avenue line has been and is unreasonable, improper and inadequate and that the said Brooklyn Heights Railroad Company does not run cars enough or with sufficient frequency on its Flatbush avenue line reasonably to accommodate the traffic offered for transportation to it and that it will be just, reasonable and proper that said service of the Brooklyn Heights Railroad Company on its Flatbush avenue line should be supplemented in the particulars hereinafter set forth at the points and at the times specified.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

Ordered, That the service of the Brooklyn Heights Railroad Company on its Flatbush avenue line be changed, increased and supplemented at the points and times and in the particulars following, that is to say, by operating during the periods mentioned, cars as follows:

### WESTBOUND.

A. Daily except Saturday and Sunday.

Leaving Vanderveer Park and running at least as far west as Borough Hall.

1. Between 6:00 and 6:30 A. M. not less than five (5) cars.
2. Between 6:30 and 7:00 A. M. not less than seven (7) cars.
3. Between 7:00 and 7:30 A. M. not less than eleven (11) cars.
4. Between 7:30 and 8:00 A. M. not less than fifteen (15) cars.
5. Between 8:00 and 8:30 A. M. not less than fifteen (15) cars.
6. Between 8:30 and 9:00 A. M. not less than twelve (12) cars.
7. Between 9:00 and 9:30 A. M. not less than ten (10) cars.
8. Between 9:30 and 10:00 A. M. not less than eight (8) cars.
9. Between 10:00 and 10:30 A. M. not less than seven (7) cars.
10. Between 10:30 and 11:00 A. M. not less than eight (8) cars.
11. Between 11:00 and 11:30 A. M. not less than eight (8) cars.
12. Between 12:30 and 1:00 P. M. not less than ten (10) cars.
13. Between 1:00 and 1:30 P. M. not less than ten (10) cars.
14. Between 1:30 and 2:00 P. M. not less than ten (10) cars.
15. Between 2:00 and 2:30 P. M. not less than ten (10) cars.
16. Between 7:00 and 7:30 P. M. not less than ten (10) cars.
17. Between 7:30 and 8:00 P. M. not less than six (6) cars.

## EASTBOUND.

## B. Daily except Saturday and Sunday.

Leaving Borough Hall, and running at least as far east as Vanderveer Park (Flatbush and Nostrand avenues).

18. Between 2:15 and 2:45 P. M. not less than ten (10) cars.
19. Between 2:45 and 3:15 P. M. not less than eleven (11) cars.
20. Between 3:15 and 3:45 P. M. not less than eleven (11) cars.
21. Between 3:45 and 4:15 P. M. not less than thirteen (13) cars.
22. Between 4:15 and 4:45 P. M. not less than fourteen (14) cars.
23. Between 4:45 and 5:15 P. M. not less than sixteen (16) cars.
24. Between 5:15 and 5:45 P. M. not less than twelve (12) cars.
25. Between 5:45 and 6:15 P. M. not less than sixteen (16) cars.
26. Between 6:15 and 6:45 P. M. not less than fifteen (15) cars.
27. Between 6:45 and 7:00 P. M. not less than six (6) cars.
28. Between 10:15 and 10:45 P. M. not less than five (5) cars.
29. Between 10:45 and 11:45 P. M. not less than ten (10) cars.

BB. By operating in addition to cars above stated, from Atlantic avenue loop, eastbound, daily except Saturday and Sunday, between the hours of 5:30 and 6:30 P. M., not less than six (6) cars to run at least as far east as Vanderveer Park.

C. By operating on Saturdays during the months of June, July, August and September cars as follows:

- (a) Main line — Vanderveer Park to Park Row and Borough Hall and return.
- |                           |                     |
|---------------------------|---------------------|
| From 4:57 to 5:12 A. M.   | on 15 min. headway. |
| From 5:12 to 6:30 A. M.   | on 6 min. headway.  |
| From 6:30 to 6:40 A. M.   | on 5 min. headway.  |
| From 6:44 to 6:54 A. M.   | on 3½ min. headway. |
| From 6:54 to 7:00 A. M.   | on 3 min. headway.  |
| From 7:00 to 7:30 A. M.   | on 2½ min. headway. |
| From 7:30 to 7:52 A. M.   | on 1¾ min. headway. |
| From 7:52 to 8:42 A. M.   | on 2 min. headway.  |
| From 8:42 to 9:30 A. M.   | on 2½ min. headway. |
| From 9:30 to 10:00 A. M.  | on 3 min. headway.  |
| From 10:00 to 11:28 A. M. | on 4 min. headway.  |
| From 11:28 to 12:32 P. M. | on 2 min. headway.  |
| From 12:32 to 6:00 P. M.  | on 2½ min. headway. |
| From 6:00 to 7:34 P. M.   | on 3½ min. headway. |
| From 7:34 to 7:50 P. M.   | on 4 min. headway.  |
| From 7:50 to 9:00 P. M.   | on 5 min. headway.  |
| From 9:00 to 11:00 P. M.  | on 6 min. headway.  |
| From 11:00 to 12:00 P. M. | on 7½ min. headway. |
| From 12:00 to 12:45 P. M. | on 15 min. headway. |
| From 12:45 to 2:05 A. M.  | on 20 min. headway. |
| From 2:05 to 2:33 A. M.   | on 28 min. headway. |
| From 2:33 to 4:33 A. M.   | on 30 min. headway. |

At all other periods of the day, except on Sundays and on all Saturdays except in the months of June, July, August and September, there shall be operated at least the number of cars called for by schedule of March 30, 1908, as supplemented by Patch No. 1, filed with the Public Service Commission for the First District.

*And it is further Ordered*, That this order shall take effect on August 21, 1908, and shall continue in force for a period of two years from and after taking effect of the same, without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years, and it is.

*Further Ordered*, That before August 28, 1908, the said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

**Brooklyn Heights Railroad Company.—Service on the Williamsburg Bridge—Bridge local cars.**

Hearing Order No. 635.  
 Final Order No. 706.  
 Extension Order No. 715.  
 Rehearing Order No. 719.  
 Final Order No. 723.

In the Matter  
 of the

Hearing on motion of the Commission on the question of improvements in and additions to the service of the BROOKLYN HEIGHTS RAILROAD

HEARING ORDER No. 635.  
 July 14, 1908.

" Service on the Williamsburg Bridge—Bridge Local Cars.

*It is hereby ordered,* That a hearing be had on the 21st day of July, 1908, at 10 o'clock in the forenoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and services of the Brooklyn Heights Railroad Company in respect to the transportation of persons in the First District upon Bridge Local cars of the Williamsburg Bridge are unreasonable, improper or inadequate, and whether the said Brooklyn Heights Railroad Company run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by it or offered for transportation to it, and if such be found to be the fact then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Brooklyn Heights Railroad Company be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sundays, over every part of its Bridge Local service a sufficient number of cars past any point of observation to provide during every thirty-minute period of the day or night a number of seats at least equal to the number of passengers at that point, the number of cars to be, however, not less than six per hour in each direction, except that between 1 A. M. and 5.30 A. M. the number of cars per hour shall never be less than two in each direction; or

2. By operating a minimum number of thirty cars during each thirty-minute period in which the provisions of subdivision (1) above are not complied with.

3. By making such other and further changes in the schedule and manner of operating cars on the Bridge Local line on the Williamsburg Bridge as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Heights Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held July 21st and 24th.

The following final order was issued:

FINAL ORDER No. 706.  
 August 28, 1908.

This matter coming on upon the report of the hearing had herein on the 21st day of July, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission, No. 635, made July 14, 1908, and returnable on July 21, 1908, and that said order was duly served upon the Brooklyn Heights Railroad Company, and that said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on July 21, 1908, and, by adjournment duly had, on July 24, 1908, at both of which sessions Mr. Commissioner McCarroll presided; Arthur DuBois, Esq., appearing for the Commission, and Arthur N. Dutton, Esq., Superintendent of Transportation, appearing for the Brooklyn Heights Railroad Company.

Now, it being made to appear after proceedings after said hearing, that the regulations and service of the Brooklyn Heights Railroad Company in respect to the

## 410 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

transportation of persons in the First District have been, and are, in certain respects, unreasonable, improper and inadequate in that the said railroad company does not run cars enough or with sufficient frequency, or on a reasonable time schedule, reasonably to accommodate the passenger traffic transported by or offered for transportation to it upon the Williamsburg Bridge; and it appearing that the changes and improvements in the regulations and service of the said company, duly set forth hereinbelow, are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public;

Now, therefore, on motion made and duly seconded, it is

*Ordered*, That the service of the Brooklyn Heights Railroad Company on the Williamsburg Bridge, as affecting the Bridge Local cars, be supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sundays, over any part of its Bridge Local service a sufficient number of cars past any point of observation to provide during every thirty-minute period of the day or night a number of seats at least equal to the number of passengers at that point, the number of cars to be, however, not less than six per hour in each direction, except that between 1 and 5:30 A. M. the number of cars per hour shall be never less than two in each direction; or

2. By operating a minimum number of twenty-four (24) cars during each thirty-minute period in which the provisions of subdivision (1) above are not complied with. And it is further

*Ordered*, That this order shall take effect on September 8, 1908, and shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearing and action thereon by the Commission, in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years. And it is further

*Ordered*, That the Brooklyn Heights Railroad Company notify the Public Service Commission for the First District within five days after service upon it of a certified copy of this order whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

### EXTENSION ORDER No. 715.

September 8, 1908.

An order, No. 706, having been made herein on the 28th day of August, 1908, ordering and directing the Brooklyn Heights Railroad Company to supplement and change the Bridge Local service on Williamsburg Bridge in certain particulars, said order to take effect September 8, 1908, and the said Brooklyn Heights Railroad Company having, on September 5, 1908, applied in writing to this Commission for an extension of such time.

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Brooklyn Heights Railroad Company shall comply with the terms of Order No. 706 be, and the same hereby is, extended to and including the 18th day of September, 1908.

Upon application of the company the following rehearing order was issued:

### REHEARING ORDER No. 718.

September 11, 1908.

An order, No. 706, having been made and filed herein on the 28th day of August, 1908, under and pursuant to an order for a hearing, No. 635, made July 14, 1908, and thereafter having been duly served upon the Brooklyn Heights Railroad Company, the same to take effect on September 8, 1908, and in and by said order the said Brooklyn Heights Railroad Company having been required to notify this Commission on or before September 2, 1908, whether the terms of said Order No. 706 are accepted and will be obeyed, and the said Brooklyn Heights Railroad Company having, on September 5, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in said Order No. 706, and sufficient reason for said rehearing having been made to appear, it is

*Ordered*, That said request for rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 706, entered and filed on August 28, 1908, be held on the 17th day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and state of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the Order No. 706, whether the original Order No. 706, or any part thereof, is in any respect unjust or unwise, and whether the said Order No. 706 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Brooklyn Heights Railroad Company be given at least five (5) days' notice of such hearing by service upon it either personally or by mail, of a certified copy of this order, and that at such rehearing said

company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered*, That the time of the said Brooklyn Heights Railroad Company within which to comply with the terms of said Order No. 706 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearings held September 17th.

The following final order was issued:

ORDER No. 723.  
September 18, 1908.

An order, No. 706, having been made and filed herein on the 28th day of August, 1908, under and pursuant to an order for a hearing No. 635 made on the 14th day of July, 1908, and said order having thereafter been duly served upon the Brooklyn Heights Railroad Company, and said company having applied in writing to this Commission for a rehearing upon said order and for a modification of its terms, and an Order No. 719 having been made and filed herein on the 11th day of September, 1908, directing a rehearing on the matters contained in said Order No. 706, and said rehearing having duly come on before the Commission on the 17th day of September, 1908, Mr. Commissioner McCarroll presiding, Grosvenor H. Backus, Esq., assistant counsel for the Commission, attending, and Mr. Arthur N. Dutton, Superintendent of Transportation of the Brooklyn Heights Railroad Company, appearing for the company, and testimony having been taken, and the Commission being of the opinion after such rehearing and after a consideration of the facts, including those arising since the making of said Order No. 706, that no part of said order is in any respect unjust or unwarranted, and that there is no reason to abrogate, change or modify said order:

Now, therefore, on motion duly made and seconded, it is

*Ordered*, That the application of said Brooklyn Heights Railroad Company for a modification of said Order No. 706 be and the said application is hereby denied; and it is further

*Ordered*. That this order shall take effect immediately, and that a copy of the same be served on the Brooklyn Heights Railroad Company.

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**Brooklyn Heights Railroad Company.—Insufficient trolley car service furnished to lower Fulton and Washington street sections.**

COMPLAINT OF H. G. ANDERSON AND C. WM. STENZEL

against

BROOKLYN HEIGHTS RAILROAD COMPANY.

Complaint Order No. 785 (see form, note 1) issued October 6th.

The company answered stating that various measures of relief were under advisement, and on November 10th installed a new line of service.

No further communication was received from the complainants.

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**Brooklyn Heights Railroad Company; New York City Railway Company.—Insufficient service over the Williamsburg Bridge between the hours of 11 P. M. and 3 A. M.**

Complaint Order No. 446.  
Discontinuance Order No. 530.

COMPLAINT OF ABRAHAM RABINOWITZ

against

BROOKLYN HEIGHTS RAILROAD COMPANY, NEW YORK CITY RAILWAY COMPANY or its receivers.

Complaint Order No. 446 (see form, note 1) issued May 1st.

412 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

The matters complained of were satisfied and the complainant so notified the commission on May 23d.

The following discontinuance order was issued:

AARON RABINOWITZ, <i>against</i> BROOKLYN HEIGHTS RAILROAD COMPANY, NEW YORK CITY RAILWAY COMPANY, or its Receivers,	<i>Complainant,</i> Defendants.	DISCONTINUANCE ORDER No. 530. May 26, 1908.
"Insufficient service over the Williamsburg Bridge between the hours of 11 p. m. and 3 A. M."		

An order, No. 446, having been made herein on or about the 1st day of May, 1908, ordering and directing the Brooklyn Heights Railroad Company, and the New York City Railway Company or its receivers, to answer the complaint herein within a time therein specified, and the said Brooklyn Heights Railroad Company and the New York City Railway Company and its receivers, having, on May 9, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied, and the complainant herein having, on May 23, 1908, notified the Commission in writing of such satisfaction,

Now, upon motion made and duly seconded, it is

*Resolved*, That the proceedings herein be, and the same hereby are, discontinued.

**Brooklyn, Queens County and Suburban Railroad Company.—**  
Service on Broadway line between Alabama avenue and Cypress Hills.

Complaint Order No. 493.  
Extension Order No. 533.

COMPLAINT OF F. A. JAY  
*against*

BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY.

Complaint Order No. 493 (see form, note 1) issued May 15th.

Extension Order No. 533 (see form, note 2) issued May 26th.

An answer was received and a copy thereof sent to complainant. Nothing further was heard from him.

**Brooklyn, Queens County and Suburban Railroad Company.—**  
Service on Ralph avenue surface line.

In the Matter of the Hearing on the motion of the Commission on the question of improvement in and additions to the service and equipment of the BROOKLYN, QUEENS COUNTY & SUBURBAN RAILROAD COMPANY, in respect to Ralph avenue Surface line.	ORDER No. 678. August 14, 1908.
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*It is hereby Ordered*, That a hearing be had on the 26th day of August, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at 154 Nassau street, borough of

**Manhattan, city of New York, State of New York,** to inquire whether the regulations, equipment, appliances and service of the Brooklyn, Queens County & Suburban Railroad Company, in respect to transportation of persons in the First District, are unjust, unreasonable, improper or inadequate, and whether the said company does not run cars enough or with sufficient frequency or possess or operate motive power enough reasonably to accommodate passenger traffic transported by it or offered for transportation to it, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation to it, and is and will be just, reasonable, proper and adequate to direct that the service of the Brooklyn, Queens County & Suburban Railroad Company on its Ralph avenue surface line, be increased and supplemented at the points and times and in the particulars following, that is to say:

1. By operating daily, including Sundays, over every point of the Ralph avenue surface line between Delancey street terminal and Canarsie depot (Rockaway avenue at New Lots road), either:

(a) A sufficient number of cars in each direction past any point of observation, to provide during every thirty (30) minute period of the day or night, a number of seats at least 10 per cent. in excess of the number of passengers at that point, the number of cars to be, however, never less than six (6) per hour in each direction, except, that between the hours of 1:00 A. M. to 5:30 A. M., the number of cars in either direction shall never be less than two per hour; or

(b) A minimum number of eleven cars in one direction, past any point of observation during each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other changes in the schedule, route, and manner of operating cars on this line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made, as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

**Further Ordered.** That the said Brooklyn, Queens County & Suburban Railroad Company be given at least ten days notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held August 26th.

It was shown at the hearing that a new schedule had been put in operation August 24th which provided for a 28 per cent. increase in service from 5:06 A. M. to 8:26 A. M. and a 13 per cent. increase from 4:24 P. M. to 7:45 P. M.

**Brooklyn, Queens County and Suburban Railroad Company;**  
**Brooklyn Union Elevated Railroad Company.**—Service on the Jamaica avenue line of the Brooklyn, Queens County and Suburban Railroad Company and on the Lexington avenue line of the Brooklyn Union Elevated Railroad Company.

Final Order No. 196.

Order denying application for rehearing, No. 663.

Rehearing Order No. 717.

Order denying application for modification, No. 733.

Rehearing Order No. 665.

Opinion of Commissioner Bassett.  
 Order denying application for rehearing, No. 735.

Upon application of the Brooklyn Union Elevated Railroad Company for a modification of paragraph 3 of Order No. 99, as amended by Order No. 165, the following order was issued:

**In the Matter  
of the**

Hearing on the motion of the Commission on the question of the adequacy of the service of the BROOKLYN HEIGHTS RAILROAD COMPANY and the BROOKLYN UNION ELEVATED RAILROAD COMPANY in respect to the present service on the Jamaica Avenue Line of the said Brooklyn Heights Railroad Company and on the Lexington Avenue Line of the said Brooklyn Union Elevated Railroad Company

FINAL ORDER No. 196.  
January 10, 1908.

**Under Order for Hearing made October 11, 1907.**

An order having been made and filed herein November 18, 1907, being Order No. 99, under and pursuant to an order for hearing made October 11, 1907, No. 38, and said Order No. 99 having been duly served upon Brooklyn Heights Railroad Company and Brooklyn Union Elevated Railroad Company, and said Brooklyn Union Elevated Railroad Company having accepted said Order No. 99 in part, but having applied in writing to this Commission for a modification of paragraph numbered (3) of said Order No. 99, and an order having been made and filed the 20th day of December, 1907, Order No. 165, modifying said paragraph (3) of said Order No. 99, and said Order No. 165 having been duly served upon said Brooklyn Union Elevated Railroad Company, and said company having made application in writing for a further modification of said paragraph numbered (3) of said Order No. 99, and due deliberation having been had upon said application and upon all the proceedings herein, and it appearing to the Commission just and proper that said paragraph numbered (3) of said Order No. 99 should be further modified in the manner hereinafter set forth:

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered*, That the said paragraph numbered (3) of said Order No. 99, dated November 18, 1907, as amended by said Order No. 165, be, and the same hereby is, modified so as to read as follows:

3. That the said company operate its Lexington Avenue trains to and from Cypress Hills Station, with a headway of not more than seven and one-half ( $7\frac{1}{2}$ ) minutes between said trains during the period between the morning and the evening rush hours, and operate its trains to Cypress Hills Station upon the same headway during the period after the evening rush hours until 12 o'clock midnight; and that during the following periods said company make each of said trains a train of not less than four cars: from the ending of the morning rush hours to and including train leaving Cypress Hills Station at 10:24 A. M.; from 2:30 P. M. to the beginning of the evening rush hours; from the end of the evening rush hours to and including the train leaving Cypress Hills Station at 7:24 P. M.

*Further ordered*, That this order shall take effect immediately.

*And it is further ordered*, That this order shall continue in force until the 27th day of November, 1908, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to anything herein described, prior to said 27th day of November, 1908.

*And it is further ordered*, That before the 15th day of January, 1908, said Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District whether the terms of this order and the terms of said Order No. 99, dated November 18, 1907, as herein modified and amended are accepted and will be obeyed.

Upon application of the Brooklyn Union Elevated Railroad Company dated, July 31, 1908, for a rehearing as to paragraph 3 of Order No. 196, no sufficient reason being shown, the following order was issued:

**ORDER No. 663.  
August 7, 1908.**

Whereas, Final Order No. 196, adopted by the Commission on January 10, 1908, accepted by the Brooklyn Union Elevated Railroad Company on January 15, 1908, provided by paragraph (3) for the operation of four car trains on the Lexington Avenue line into Cypress Hills terminal between the morning rush hours and 10:30 A. M., and between 2:30 P. M. and the beginning of the evening rush hours; and

Whereas, under date of July 31, 1908, the said company has made application in writing for a rehearing in said matter in order, as it says, that it may present evidence which it believes will warrant a reduction in the service; and

Whereas, in the judgment of the Commission no sufficient reason for a rehearing in said matter has been made to appear,

Now, therefore, be it

*Resolved*, That the said application of the Brooklyn Union Elevated Railroad Company for a rehearing in the matter of paragraph (3) of Final Order No. 196 be, and the same hereby is, denied.

Upon application of the Brooklyn Union Elevated Railroad Company dated September 2, 1908, for a rehearing as to matter contained in Orders Nos. 99 and 196 the following order was issued:

In the Matter of the <b>Hearing on motion of the Commission on the question of the adequacy of the service of the BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY and the BROOKLYN UNION ELEVATED RAILROAD COMPANY, in respect to the service on the Jamaica Avenue Line of said Brooklyn, Queens County and Suburban Railroad Company, and on the Lexington Avenue Line of the said Brooklyn Union Elevated Railroad Company.</b>	<b>REHEARING ORDER</b> No. 717. September 11, 1908.
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An order, No. 196, having been made and filed herein on January 10, 1908, modifying the terms of an order No. 99 made and filed herein on November 18, 1908, under and pursuant to an order for a hearing No. 38, made October 11, 1908, directing the Brooklyn Union Elevated Railroad Company to increase its service on the Lexington avenue line, and the said Orders Nos. 99 and 196 having been duly served upon the Brooklyn Union Elevated Railroad Company, and said company having accepted Order No. 196; and said Brooklyn Union Elevated Railroad Company having, on September 2, 1908, applied in writing to this Commission for a rehearing in respect to the matter contained in said Orders Nos. 99 and 196, and sufficient reason for said rehearing having been made to appear,

Ordered, That said request for a rehearing be granted, and that the said rehearing upon the matters contained in said Orders Nos. 99 and 196 be held on the 18th day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of said orders, whether Orders Nos. 99 and 196, or any part thereof, are unjust, or unwise, and whether the said Orders Nos. 99 and 196 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said orders, and to determine the time of taking effect of the orders as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered. That the said Brooklyn Union Elevated Railroad Company be given at least five (5) days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

A rehearing having been held on September 18th, in reference to the application of the Brooklyn Union Elevated Railroad Company for a modification of Orders Nos. 99 and 196 and said company having withdrawn its application for such modification, the following order was issued:

ORDER No. 733.  
September 25, 1908.

An Order No. 196 having been made and filed herein on January 10, 1908, modifying the terms of an Order No. 99 made and filed herein on November 18, 1907, under and pursuant to an order for a Hearing No. 38, made October 11, 1907, which Order No. 99, as modified by said Order No. 196, directed the Brooklyn Union Elevated Railroad Company to increase its service on its Lexington avenue line, and the said Orders Nos. 99 and 196 having been duly served upon the Brooklyn Union Elevated Railroad Company, and said company having accepted Order No. 99 in part, and having subsequently accepted Order No. 196, and said company having applied in writing to this Commission for a rehearing in respect to the matters contained in said Orders Nos. 99 and 196, and for a modification of the terms of said orders, and an Order No. 717 having been made and filed herein on the 11th day of September, 1908, directing a rehearing on the matters contained in said Orders Nos. 99 and 196, and said rehearing having duly come on before the Commission on the 18th day of September, 1908, Mr. Commissioner Bassett presiding, Grosvenor H. Backus, Esq., assistant counsel for the Commis-

sion, attending, and Mr. Arthur N. Dutton, superintendent of transportation of the Brooklyn Union Elevated Railroad Company, appearing for said company, and said company having withdrawn its application for a modification of the terms of said Orders Nos. 99 and 196;

Now, therefore, on motion duly made and seconded,

*It is ordered*, That the application of said Brooklyn Union Elevated Railroad Company for a modification of said Orders Nos. 99 and 196, be and the same hereby is dismissed without prejudice to the right of the Commission to make such further order or orders in the premises as may from time to time appear proper;

*And it is further ordered*, That this order shall take effect immediately, and that a copy thereof be served on the Brooklyn Union Elevated Railroad Company.

Upon application of the Brooklyn, Queens County and Suburban Railroad Company, dated July 31st, for a rehearing as to paragraph 1 of Order 99, the following order was issued:

#### REHEARING ORDER No. 665.

August 7, 1908.

An order, No. 99, having been made and filed herein on November 18, 1908, under and pursuant to an order for a hearing No. 88, made October 11, 1907, directing the said Brooklyn, Queens County and Suburban Railroad Company to increase its service on the Jamaica avenue line between Cypress Hills station and Jamaica, and said Order No. 99 having been duly served upon the Brooklyn, Queens County and Suburban Railroad Company, and said company having accepted said Order No. 99 on November 22, 1907, and said company having subsequently, on July 31, 1908, applied in writing to this Commission for a rehearing in respect to the matter contained in paragraph (1) of said Order No. 99, and sufficient reason for said rehearing having been made to appear,

*Ordered*, That said request for a rehearing be granted, and that the said rehearing upon the matters contained in paragraph (1) of said Order No. 99, entered and filed on November 18, 1907, be held on the 11th day of August, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of Order No. 99, whether Order No. 99 or any part thereof, is unjust, unwise, and whether the said Order No. 99 should be abrogated, changed, or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said Brooklyn, Queens County and Suburban Railroad Company be given at least two days' notice of such rehearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining witnesses as to the matters aforesaid.

Hearing held August 18th.

#### OPINION OF COMMISSION.

(Adopted September 25, 1908.)

COMMISSIONER BASSETT:—

Although it appears that the present service is somewhat in excess of traffic requirements, I am of the opinion that the application should be denied inasmuch as closed cars will soon replace the open cars.

Thereupon, the following final order was issued.

#### ORDER No. 735.

September 25, 1908.

An order, No. 99, having been made and filed herein on or about the 18th day of November, 1907, under and pursuant to an order for hearing No. 88 made October 11, 1907, which Order No. 99 directed the Brooklyn, Queens County and Suburban Railroad Company to increase the service on its Jamaica avenue line, and the said Order No. 99 having been duly served upon the Brooklyn, Queens County and Suburban Railroad Company, and said company having accepted said Order No. 99, and said company having applied in writing to this Commission for a rehearing in respect to the matter contained in paragraph 1 of said Order No. 99, and for a modification of the terms of the said paragraph of the said order; and an order,

No. 665, having been made and filed herein on the 7th day of August, 1908, directing a rehearing on the matters contained in paragraph 1 of said Order No. 99, and said rehearing having duly come before the Commission on the 18th day of August, 1908, Mr. Commissioner McCarroll presiding, Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission, and Mr. Arthur N. Dutton, superintendent of transportation, appearing for the Brooklyn, Queens County and Suburban Railroad Company, and it appearing after said rehearing that there is not sufficient cause for modifying the terms of paragraph 1 of Order No. 99 above mentioned:

Now, therefore, on motion made and duly seconded, it is

*Ordered*, That the application of the said Brooklyn, Queens County and Suburban Railroad Company for a modification of the terms of paragraph 1 of said Order No. 99 be, and the same hereby is, dismissed without prejudice to the right of the Commission to make such further order or orders in the premises as may from time to time appear proper; and it is further

*Ordered*, That this order shall take effect immediately and that a copy thereof be served on the Brooklyn, Queens County and Suburban Railroad Company.

### Brooklyn Union Elevated Railroad.—Service between Park Row and Sands street, and Fulton ferry and Brighton beach.

Hearing Order No. 202.  
Final Order No. 296.  
Final Order No. 664.

In the Matter  
of the

Hearing on the Motion of the Commission on the Question of Improvements in and Additions to the service and equipment of the BROOKLYN UNION ELEVATED RAILROAD COMPANY, in the particulars hereinbelow mentioned.

ORDER FOR HEARING  
No. 202,  
January 14, 1908.

*It is hereby ordered*, That a hearing be had on the 27th day of January, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire whether the regulations, equipment, appliances and service of the Brooklyn Union Elevated Railroad Company in respect to the transportation of persons in the First District are unjust, unreasonable, improper or inadequate, and whether said company does not run trains enough or cars enough, or with sufficient frequency, or possess or operate motive power enough reasonably to accommodate passenger traffic transported by it or offered for transportation to it on its lines running between Park Row, Manhattan, Sands street, Brooklyn, and Fulton Ferry, Brooklyn, and Brighton Beach, Brooklyn, and if such be found to be the fact then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Brooklyn Union Elevated Railroad Company be increased and supplemented at the points and times and in the particulars following, that is to say:

#### A.—AT FRANKLIN AVENUE STATION, NORTH AND WESTBOUND.

1. Between 7:00 and 7:30 A. M., by an increase of three (3) cars, or by an increase from ten (10) to thirteen (13) cars.
2. From 7:30 to 8:00 A. M., by an increase of five (5) cars, or by an increase from twenty-three (23) to twenty-eight (28) cars.
3. From 8:00 to 8:30 A. M., by an increase of twelve (12) cars, or by an increase from thirty (30) to forty-two (42) cars.
4. From 8:30 to 9:00 A. M., by an increase of twelve (12) cars, or by an increase from sixteen (16) to twenty-eight (28) cars.
5. From 9:00 to 9:30 A. M., by an increase of four (4) cars, or by an increase from twenty-two (22) to twenty-six (26) cars.
6. From 9:30 to 10:00 A. M., by an increase of one (1) car, or by an increase from twelve (12) to thirteen (13) cars.

#### B.—AT FRANKLIN AVENUE STATION, EAST AND SOUTHBOUND.

1. From 4:30 to 5:00 P. M., by an increase of two (2) cars, or by an increase from thirteen (13) to fifteen (15) cars, in the service from Brooklyn Bridge.
2. From 5:00 to 6:30 P. M., by an increase of five (5) cars, or by an increase from fifteen (15) to twenty (20) cars, in the service from Brooklyn Bridge.

3. From 5:30 to 6:00 P. M., by an increase of eighteen (18) cars, or by an increase from twenty-one (21) to thirty-nine (39) cars, in the service from Brooklyn Bridge.

4. From 5:30 to 6:00 P. M., by an increase of two (2) cars, or by an increase from three (3) to five (5) cars, in the service from Fulton Ferry.

5. From 6:00 to 6:30 P. M., by an increase of thirteen (13) cars, or by an increase from fifteen (15) to twenty-eight (28) cars, in the service from Brooklyn Bridge.

6. From 6:00 to 6:30 P. M., by an increase of three (3) cars, or by an increase from eleven (11) to fourteen (14) cars, in the service from Fulton Ferry.

7. From 6:30 to 7:00 P. M., by an increase of seven (7) cars, or by an increase from eighteen (18) to twenty-five (25) cars, in the service from Brooklyn Bridge.

8. From 10:00 to 11:00 P. M., by an increase of two (2) cars, or by an increase from seven (7) to nine (9) cars, in the service from Brooklyn Bridge.

9. From 11:00 to 12:00 P. M., by an increase of one (1) car, or by an increase from eleven (11) to twelve (12) cars, in the service from Brooklyn Bridge.

And to determine further whether such increases should be obtained by adding additional trains rather than by adding cars to trains that appear on the existing schedule.

And further to determine whether the schedule of the trains running from Fulton Ferry should be rearranged so that these trains should immediately precede the Brighton Beach trains, so as to reduce the wait for passengers transferring from Fulton Ferry trains at Kings Highway.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Union Elevated Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held January 27th, February 3d, 14th and 18th.

The following final order was issued:

FINAL ORDER No. 296.

February 28, 1908.

This matter coming on upon the report of the hearing had herein on the 27th day of January, 1908, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order of this Commission No. 202, made January 14, 1908, and returnable on the 27th day of January, 1908, and that the said order was duly served upon the Brooklyn Union Elevated Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 27th day of January, 1908, and by adjournment duly had on the 3d day of February, 1908, and by adjournment duly had on the 14th day of February, 1908, and by adjournment duly had on the 18th day of February, 1908, and that at each of said sessions Mr. Commissioner Bassett presided, and proof being taken, and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission at each of said sessions, and J. F. Calderwood, Esq., vice-president and general manager of said company, and Arthur N. Dutton, Esq., superintendent of transportation of said company, appearing for said company.

Now, it being made to appear after the proceedings upon the said hearing that the service of the Brooklyn Union Elevated Railroad Company is unreasonable and inadequate, in that said company does not operate trains enough or cars enough reasonably to accommodate the passenger traffic transported by it or offered for transportation to it at the times hereinafter specified, and it appearing that it would be just, reasonable and proper that said service of the Brooklyn Union Elevated Railroad Company upon its Brighton Beach line should be supplemented in the particulars hereinafter set forth, and at the times so hereinafter set forth,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered,* That the said Brooklyn Union Elevated Railroad Company increase and supplement its said service upon its Brighton Beach line, in the particulars and by the means hereinafter stated and at the times hereinafter set forth, excepting on Saturday afternoon, Sundays and holidays, to wit:

NORTH AND WESTROUND SERVICE.

1. By an increase of one (1) car to be added to the five (5) car train from Brighton Beach to New York, passing Franklin avenue station between 7:00 A. M. and 7:30 A. M., so that said company shall operate at least two (2) six-car trains from Brighton Beach to New York, past Franklin avenue, between said hours.

2. By an increase of two (2) cars, one (1) car to be added to each of the five (5) car trains from Brighton Beach to New York, passing Franklin avenue station between 9:00 A. M. and 9:30 A. M., so that said company shall operate at least four (4) six-car trains from Brighton Beach to New York, past Franklin avenue, between 9:00 A. M. and 9:30 A. M.

## EAST AND SOUTHBOUND SERVICE.

3. By an increase of one (1) car to be added to the train from New York to Brighton Beach due at Franklin avenue station at 5:32½ P. M., so that said company shall operate from three (3) six-car trains from New York to Brighton Beach, past Franklin avenue, between 5:30 P. M. and 6:00 P. M.

4. By an increase of three (3) cars, one (1) car to be added to the five (5) car train due at Franklin avenue at 6:51 P. M., and two (2) cars to be added to the train due at Franklin avenue at 6:59 P. M., so that said company shall operate four (4) six-car trains from New York to Brighton Beach, past Franklin avenue station, between 6:30 P. M. and 7:00 P. M.

*And it is further ordered,* That this order shall take effect on or before the 6th day of March, 1908, and shall remain in force until modified by the further order of this Commission.

*And it is further ordered,* That on or before the 5th day of March, 1908, the Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

The company on July 31st made application for a rehearing. The following order denying the application was issued:

In the Matter  
of the

Application of the BROOKLYN UNION ELEVATED RAILROAD COMPANY for a rehearing in the matter of Final Order No. 296, adopted by the Commission on February 28, 1908, and accepted by said company on March 5, 1908, directing certain increases in the service of said company on its Brighton Beach Line.

ORDER No. 664.  
August 7, 1908.

Whereas Final Order No. 296, adopted by the Commission on February 28, 1908, accepted by the Brooklyn Union Elevated Railroad Company on March 5, 1908, directed certain increases in the service of said company on its Brighton Beach Line; and

Whereas under date of July 31, 1908, said company has made application for a rehearing in said matter in order, as it says, that it may produce evidence which it believes will warrant a reduction in the service; and

Whereas, in the judgment of the Commission, no sufficient reason for a rehearing in said matter has been made to appear; and

Whereas with the coming of the fall and winter months the volume of the traffic on said line will be greatly increased,

Now, therefore, be it

*Resolved,* That the said application of the Brooklyn Union Elevated Railroad Company for a rehearing in the matter of Final Order No. 296 be and the same hereby is denied.

Brooklyn Union Elevated Railroad Company.—Service on  
Broadway elevated line.

Hearing Order No. 383.  
Opinion of Commissioner Bassett.  
Final Order No. 471.  
Rehearing Order No. 525.  
Final Order No. 562.  
Rehearing Order No. 716.  
Final Order No. 738.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and equipment of the BROOKLYN UNION ELEVATED RAILROAD COMPANY.

HEARING ORDER No. 383.  
March 31, 1908.

"Service on Broadway elevated line."

*It is hereby ordered,* That a hearing be had on the 13th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be

adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, equipment, appliances and service of the Brooklyn Union Elevated Railroad Company in respect to transportation of persons in the First District are unjust, unreasonable, improper or inadequate, and whether the said company runs cars enough or with sufficient frequency, or possesses or operates motive power enough reasonably to accommodate passenger traffic transported by it or offered for transportation to it, and if such be found not to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of said Brooklyn Union Elevated Railroad Company on its Broadway line be increased and supplemented at points and times and in the particulars following, that is to say:

#### PARK AVENUE STATION, WESTBOUND.

1. Between 6:00 and 6:30 A. M., by the addition of one car each to two four-car trains, making a total service of one three-car train, one four-car train, and two five-car trains, or seventeen cars.
2. Between 6:30 and 7:00 A. M., by the addition of two cars each to four four-car trains, making a total service of four six-car trains, or twenty-four cars.
3. Between 7:00 and 7:30 A. M., by the addition of two cars each to three four-car trains, making a total service of one five-car and three six-car trains, or twenty-three cars.
4. Between 7:30 and 8:00 A. M., by the addition of two cars each to two four-car trains and one car each to two five-car trains, making a total service of four six-car trains, or twenty-four cars.
5. Between 8:00 and 8:30 A. M., by the addition of one car each to two four-car trains, making a total service of two four-car trains and two five-car trains, or eighteen cars.
6. Between 8:30 and 9:00 A. M., by the addition of one car to one four-car train, and two cars to one three-car train, making a total service of two three-car and two five-car trains, or sixteen cars.
7. Between 9:00 and 9:30 A. M., by the addition of one car to one three-car train and one car to one two-car train, making a total service of one four-car, one three-car and two two-car trains, or eleven cars.
8. Between 9:30 and 10:00 A. M., by the addition of one car each to two two-car trains, making a total service of two three-car and two two-car trains, or ten cars.
9. Between 7:30 and 8:00 P. M., by the addition of one car each to three three-car trains, making a total service of one three-car train and three four-car trains, or fifteen cars.

#### PARK AVENUE STATION, EASTBOUND.

10. Between 4:00 and 4:30 P. M., by the addition of one car to each of the four two-car trains, making a total service of four three-car trains, or twelve cars.
11. Between 4:30 and 5:00 P. M., by the addition of one car each to two four-car trains, making a total service of two four-car and two five-car trains, or eighteen cars.
12. Between 5:00 and 5:30 P. M., by the addition of two cars to each of the four four-car trains, making a total service of four six-car trains, or twenty-four cars.
13. Between 5:30 and 6:00 P. M., by the addition of two cars to one four-car train, one car each to three five-car trains and one six-car train, making a total service of five six-car trains, or thirty cars.
14. Between 6:00 and 6:30 P. M., by the addition of one car each to three five-car trains and two six-car trains making a total service of six six-car trains, or thirty-six cars.
15. Between 6:30 and 7:00 P. M., by the addition of one car to one three-car train, one car to one four-car train and one car each to two five-car trains, making a total service of one four and one five-car train and two six-car trains, or twenty-one cars.
16. Between 7:00 and 7:30 P. M., by the addition of one car to one four-car train and one car each to two three-car trains, making a total service of one five-car train and three four-car trains, or seventeen cars.
17. Between 7:30 and 8:00 P. M., by the addition of one car each to four three-car trains, making a total service of four four-car trains, or sixteen cars.

#### SATURDAY — PARK AVENUE STATION, EASTBOUND.

18. Between 4:00 and 4:30 P. M., by the addition of one car each to two three-car trains and one car each to two four-car trains, making a total service of one three-car train, two four-car and two five-car trains, or twenty-one cars.
19. Between 4:30 and 5:00 P. M., by the addition of one car each to four four-car trains, making a total service of four five-car trains, or twenty cars.
20. Between 5:00 and 5:30 P. M., by the addition of one car each to four four-car trains, making a total service of four five-car trains, or twenty cars.
21. Between 5:30 and 6:00 P. M., by the addition of one car each to four four-car trains, making a total service of four five-car trains, or twenty cars.
22. Between 6:00 and 6:30 P. M., by the addition of one car each to four four-car trains, making a total service of four five-car trains, or twenty cars.
23. 6:30 to 7:00, no increase.

24. Between 7:00 and 7:30 P. M., by the addition of one car each to two four-car trains, making a total service of two four-car and two five-car trains, or eighteen cars.

25. Between 7:45 and 8:15 P. M., by the addition of one car each to two four-car trains, making a total service of two four-car and two five-car trains, or eighteen cars.

26. Between 10:45 and 11:15 P. M., by the addition of two cars each to two three-car trains and one car each to two three-car trains, making a total service of two four-car and two five-car trains, or eighteen cars.

SUNDAY — PARK AVENUE STATION, WESTBOUND.

27. Between 5:00 and 6:00 P. M., by the addition of one three-car train, making a total service of eight three-car trains, or twenty-four cars.

28. Between 6:00 and 7:00 P. M., by the addition of one three-car train, making a total service of seven three-car trains, or twenty-one cars.

29. Between 7:00 and 8:00 P. M., by the addition of one three-car train, making a total service of six three-car trains, or eighteen cars.

30. Between 8:00 and 9:00 P. M., by the addition of one car each to two two-car trains, making a total service of seven three-car trains, or twenty-one cars.

31. Between 9:00 and 10:00 P. M., by the addition of one car each to five two-car trains, making a total service of five three-car trains, or fifteen cars.

32. Between 10:00 and 11:00 P. M., by the addition of one car each to seven two-car trains, making a total service of seven three-car trains, or twenty-one cars.

33. Between 11:00 and 12:00 P. M., by the addition of one two-car train, making a total service of six two-car trains, or twelve cars.

34. Between 1:00 and 2:00 P. M., by the addition of one three-car train, making a total service of seven three-car trains, or twenty-one cars.

35. Between 2:00 and 3:00 P. M., by the addition of one three-car train, making a total service of seven three-car trains, or twenty-one cars.

36. Between 3:00 and 4:00 P. M., by the addition of one three-car train, making a total service of seven three-car trains, or twenty-one cars.

37. Between 4:00 and 5:00 P. M., by the addition of one three-car train, making a total service of seven three-car trains, or twenty-one cars.

38. Between 9:00 and 10:00 P. M., by the addition of one car each to six two-car trains, making a total service of six three-car trains, or eighteen cars.

39. Between 10:00 and 11:00 P. M., by the addition of one car each to six two-car trains, making a total service of six three-car trains, or eighteen cars.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Union Elevated Railroad Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held April 13th.

OPINION OF COMMISSION.  
(Adopted May 8, 1908.)

COMMISSIONER BASSETT:—

"The hearing order in this proceeding directed that a hearing be held to inquire whether a certain minimum number of cars should be operated in certain specified hours. In all there were thirty-nine periods considered, and a certain number of cars named for each period. The hearing was held and all the provisions of the hearing order were considered, but it appeared after some testimony was taken that it might be desirable to issue the final order on an elastic basis which orders a seat for every passenger. The railroad company waived all objection to a final order drawn in this form, and further testimony was taken for the purpose of having the record show facts upon which such an order could be based.

"The Broadway Elevated Line operates alternate trains from Broadway Ferry to Carnarsie and to Cypress Hills and return. There is at present no limiting point on this line, and it is admitted by the railroad that it is a physical possibility to operate more than enough trains and cars to meet all passengers at all points on the line. It therefore seems that this is a good opportunity to make a final order calling for a seat for every passenger. There is, in my opinion, in the case of this elevated railroad company operating larger cars and operating cars as trains a much better opportunity for one hundred passengers to find reasonable accommodation in one hundred seats than in the case on a surface car line. For

this reason I think it best that the order should direct the operation of as many seats as there are passengers presenting themselves, and should not call for a ten per cent excess of seats.

"The railroad company now operates trains at a seven and one-half minute interval from Williamsburg Bridge, and during the ordinary hours of travel I think it is not desirable that the headway should be greater than this. The testimony shows that in the rush hours and in the hours immediately preceding and immediately following the rush hours, the company does not operate sufficient cars, and I believe better service can be insisted upon.

"I therefore recommend that the Brooklyn Union Elevated Railroad Company be directed to operate on their Broadway line, daily, including Sundays, a sufficient number of cars in each direction past any point of observation to provide during every thirty-minute period of the day and night a number of seats at least equal to the number of passengers at that point; the number of trains passing any point to be, however, never less than four trains in each thirty-minute period, except between the hours of 11 P. M. and 1 A. M., during which period not less than three trains shall be operated in each thirty-minute period, and except between the hours of 1 A. M. and 6 A. M., for which period I recommend no provision whatsoever in the final order."

Thereupon the following final order was issued:

**FINAL ORDER No. 471.**

May 8, 1908.

This matter coming on upon the report of the hearing had herein on the 13th day of April, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission made on the 31st day of March, 1908, and returnable on the 13th day of April, 1908, and that the said order was duly served upon the Brooklyn Union Elevated Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on April 13, 1908, before Mr. Commissioner Bassett, presiding, Arthur DuBois, Esq., appearing for the Commission, and Arthur N. Dutton, Esq., appearing for the Brooklyn Union Elevated Railroad Company;

Now, it being made to appear after the proceedings upon the said hearing that the regulations and service of the Brooklyn Union Elevated Railroad Company on its Broadway Elevated Line, in respect to transportation of persons in the First District, has been and is unreasonable, improper and inadequate, in that said Brooklyn Union Elevated Railroad Company does not run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by it or offered for transportation to it, and it appearing that the changes and improvements in the regulations and service of the said company as below set forth are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public;

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered.* That the service of the Brooklyn Union Elevated Railroad Company on its Broadway Elevated Line be increased, supplemented and changed in the following manner, that is to say:

By operating daily, including Sundays, over every point of its Broadway Elevated Line, between Marcy avenue and Manhattan Junction, a sufficient number of cars in each direction past any point of observation to provide during every thirty-minute period of the day and night a number of seats at least equal to the number of passengers at that point; the number of trains passing any point between Marcy avenue and Manhattan Junction to be, however, never less than four (4) in each thirty-minute period between the hours of 6:00 A. M. and 11:00 P. M., and never less than three (3) in each thirty-minute-period between the hours of 11:00 P. M. and 1:00 A. M. And it is further

*Ordered.* That this order shall take effect on May 25, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed and in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years. And it is further

*Ordered.* That before May 22, 1908, the said Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

## REHEARING ORDER No. 525.

May 26, 1908.

An order, No. 471, having been made and filed herein on May 8, 1908, under and pursuant to an order for a hearing, No. 383, made March 31, 1908, and thereafter having been duly served upon the Brooklyn Union Elevated Railroad Company, the same to take effect by or before the 25th day of May, 1908, and in and by the said order the said Brooklyn Union Elevated Railroad Company having been required to notify this Commission on or before the 22d day of May, 1908, whether the terms of said order, No. 471, are accepted and will be obeyed, and the said Brooklyn Union Elevated Railroad Company having, on May 21st, applied in writing to this Commission for a rehearing in respect to the matter contained in said Order No. 471, and sufficient reason for said rehearing having been made to appear,

*Ordered*, That said request for rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 471, entered and filed on May 8, 1908, be held on the 29th day of May, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, City and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the Order No. 471, whether the original order, No. 471, or any part thereof is in any respect unjust or unwise, and whether the said Order No. 471 should be abrogated, changed or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Brooklyn Union Elevated Railroad Company be given at least two days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered*, That the time of the said Brooklyn Union Elevated Railroad Company within which to comply with the terms of said Order No. 471 be and the same hereby is extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held May 29th.

The following final order was issued:

## ORDER No. 562, MADE AFTER REHEARING.

June 9, 1908.

This matter coming on upon the report of the rehearing of Order No. 471, had herein on May 29, 1908, and it appearing that said rehearing was held by and pursuant to an order of this Commission made May 26, 1908, and numbered 525, and returnable on the 29th day of May, 1908, and that the said order was duly served upon the Brooklyn Union Elevated Railroad Company, and that the said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on May 29, 1908, before Mr. Commissioner Bassett, presiding, Arthur DuBois, Esq., appearing for the Commission, and Arthur N. Dutton, Esq., appearing for the Brooklyn Union Elevated Railroad Company, and testimony having been taken.

Now, after the proceedings upon said rehearing, and after consideration of the facts including those arising since the making of the order, the Commission being of opinion that the original Order No. 471 for the improvement in and addition to the equipment and service of the Brooklyn Union Elevated Railroad Company should be changed and modified in certain particulars:

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is  
*Ordered*, That Order No. 471, made May 8, 1908, be and the same hereby is changed and modified to read as follows:

## ORDER No. 471.

This matter coming on upon the report of the hearing had herein on the 13th day of April, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission made on the 31st day of March, 1908, and returnable on the 13th day of April, 1908, and that the said order was duly served upon the Brooklyn Union Elevated Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on April 13, 1908, before Mr. Commissioner Bassett, presiding, Arthur DuBois, Esq., appearing for the Commission, and Arthur N. Dutton, Esq., appearing for the Brooklyn Union Elevated Railroad Company.

Now, it being made to appear after the proceedings upon the said hearing that

the regulations and service of the Brooklyn Union Elevated Railroad Company on its Broadway Elevated Line, operating to Canarsie and Cypress Hills, in respect to transportation of persons in the First District, has been and is unreasonable, improper and inadequate in that said Brooklyn Union Elevated Railroad Company does not run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by it or offered for transportation to it, and it appearing that the changes and improvements in the regulations and service of the said company as below set forth are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public;

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, That the service of the Brooklyn Union Elevated Railroad Company on its Broadway Elevated Line, operating to Canarsie and Cypress Hills, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sundays, over every point on its Broadway Elevated Line, operating to Canarsie and Cypress Hills, between Marcy avenue and Park avenue, a sufficient number of cars in each direction past any point of observation to provide during every thirty-minute period of the day and night a number of seats at least equal to the number of passengers at that point.

2. By operating past every point between Marcy avenue and Park avenue a number of trains on week days never less than four in each thirty-minute period between the hours of 6 A. M. and 11 P. M., and never less than three in each thirty-minute period between the hours of 11 P. M. and 1 A. M.

3. By operating on Sundays past every point between Marcy avenue and Park avenue never less than three trains in each thirty-minute period between 6 A. M. and 11 P. M. And it is further

*Ordered*, That this order shall take effect on June 15, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein and prior to the expiration of said period of two years. And it is further

*Ordered*, That before June 15, 1908, the said Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

#### REHEARING ORDER No. 716.

September 11, 1908.

An order, No. 562, having been made and filed herein on or about the 9th day of June, 1908, under and pursuant to an order for rehearing No. 525, made on the 26th day of May, 1908, resetting the terms of Final Order No. 471 made and filed herein on the 8th day of May, 1908, and said Order No. 562 having been duly served upon the Brooklyn Union Elevated Railroad Company, the same to take effect on June 15, 1908, and the said Brooklyn Union Elevated Railroad Company having, on September 2, 1908, applied in writing to this Commission for a further modification of the terms of said Order No. 471, and to that end requested a further rehearing in regard to some of the matters contained in said Order No. 471 as modified by the terms of said Order No. 562; and sufficient reason for said rehearing being made to appear,

*Ordered*, That the said request for a rehearing be granted, and that such rehearing upon the matters contained in said Order No. 562, entered and filed on June 9, 1908, be held on the 18th day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to determine after such rehearing and after consideration of the facts, including those arising since the making of Order No. 562, whether the original Order No. 471 as modified by Order No. 562, or any part thereof is in any respect unjust or unwise and whether the said Order No. 562 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Brooklyn Union Elevated Railroad Company shall be given at least five (5) days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered*, That the time of the Brooklyn Union Elevated Railroad Company to comply with the terms of said Order No. 562 be, and the same hereby is, suspended from September 15, 1908, until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held September 18th.

The following final order was issued:

ORDER No. 738.  
September 25, 1908.

An order, No. 562, having been made and filed herein on or about the 9th day of June, 1908, which resettled and modified the terms of Final Order No. 471 of this Commission, and said Order No. 562 having been duly served on the Brooklyn Union Elevated Railroad Company, the same to take effect on June 15, 1908, and the said Brooklyn Union Elevated Railroad Company having, on September 2, 1908, applied in writing to this Commission for a further modification of the terms of said Order No. 471, and having to that end requested a further rehearing in regard to some of the matters contained in said Order No. 471, as modified by said Order No. 562, and the Commission having ordered a rehearing in regard to such matters and such rehearing having come on before the Commission on the 18th day of September, 1908, Mr. Commissioner Bassett, presiding, Grosvenor H. Backus, Esq., assistant counsel to the Commission, attending, and Mr. Arthur N. Dutton, Superintendent of Transportation of the Brooklyn Union Elevated Railroad Company, appearing for said company, and the Commission being of the opinion after such rehearing and the consideration of the facts, including those arising since the making of Order No. 562, that the operation of said Order No. 471, as modified by said Order No. 562, should be suspended pending the readjustment of traffic incident to the commencement of through operation of elevated trains over the Williamsburg Bridge,

Now, on motion duly made and seconded, it is

*Ordered*, That the operation of said Order No. 471, as modified by said Order No. 562, be and the same hereby is suspended to and including the 25th day of October, 1908. And it is further

*Ordered*, That this order shall take effect immediately and continue in force until modified by further order of this Commission.

**Brooklyn Union Elevated Railroad Company.—Service on  
Fifth avenue and Fulton street elevated lines.**

In the Matter  
of the

Hearing on Motion of the Commission on the  
Question of Improvements in and Additions to the  
Service and Equipment of the BROOKLYN  
UNION ELEVATED RAILROAD COMPANY  
in respect to the Fulton Street and Fifth Avenue  
Elevated Lines.

HEARING ORDER No. 771.  
October 9, 1908.

*It is hereby ordered*, That a hearing be had on the 15th day of October, 1908, at 11:30 o'clock in the forenoon, or at any other time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire whether the regulations, equipment, appliances and service of the Brooklyn Union Elevated Railroad Company, in respect to the transportation of persons in the First District, are improper or inadequate, and whether the said company does not run trains and cars enough reasonably to accommodate the passenger traffic transported by it or offered for transportation to it, upon its Fulton street and Fifth avenue elevated lines, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported by it or offered for transportation to it, and is and will be just, reasonable, proper and adequate to direct that the service of the said Brooklyn Union Elevated Railroad Company upon its Fulton street and Fifth avenue lines be increased and supplemented.

And if any such changes, improvement or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Brooklyn Union Elevated Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held October 15th, 16th and 20th.

**Brooklyn Union Elevated Railroad Company.—Service on  
Broadway elevated line.**

In the Matter  
of the

Hearing on Motion of the Commission as to the  
Regulations, Practices, Equipment and Service of  
the BROOKLYN UNION ELEVATED RAILROAD  
COMPANY in respect to its Broadway Line.

CASE 1014.  
HEARING ORDER.  
December 15, 1908.

*It is hereby ordered,* That a hearing be had on the 24th day of December, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire whether the regulations, practices, equipment and service of the Brooklyn Union Elevated Railroad in respect to the transportation of persons in the First District, upon its Broadway Line, are unreasonable, improper or inadequate, and to determine whether changes in said regulations, practices, equipment or service in the following particulars, at the place or places herein mentioned be just, reasonable, adequate and proper and whether such changes shall be put in force, observed and used on said line of said company; and also to inquire and determine whether said company does not run trains enough, or cars enough, or possess motive power enough reasonably to accommodate the traffic transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency; and also to inquire and determine whether improvements, changes or additions to or in tracks or other property or device used by said company ought reasonably to be made, in order to promote the security or convenience of the public or employees, or in order to secure adequate facilities for the transportation of passengers, namely, whether said Brooklyn Union Elevated Railroad Company should be required and directed hereafter to operate its Broadway Line between Delancey street, Manhattan, and Canarsie, as follows:

1. Either to provide on every day, including Sunday, as many seats in each direction past any point as there are passengers.

(a) On any four consecutive trains when the scheduled headway does not exceed five (5) minutes;

(b) On any three consecutive trains when the scheduled headway is more than five (5) minutes, but does not exceed ten (10) minutes;

(c) On any two (2) consecutive trains when the scheduled headway is more than ten (10) minutes, but does not exceed fifteen (15) minutes;

(d) On any train when the scheduled headway is more than fifteen (15) minutes; or

2. When as many seats as passengers cannot be provided, as described in the foregoing, to operate

(a) As many six-car trains on its line as possible over Broadway at Manhattan Junction, the number of trains operating on this line to be proportioned to the maximum number of trains that can pass over Broadway at Manhattan Junction as the total number of passengers in such six-car trains on this line is to the total number of passengers in all the trains passing over Broadway at Manhattan Junction.

3. At all times to operate trains on said line upon such a schedule that the scheduled headway between through trains on said line shall not exceed thirty (30) minutes at any time between midnight and 6 A. M., and shall not exceed ten (10) minutes at any time between 6 A. M. and midnight; and further

4. To operate frequent shuttle service between Broadway Ferry and Marcy Avenue station to make close connections with all through trains stopping at said Marcy Avenue station; and further

5. Within fifteen days from the service of this order and from time to time thereafter to ascertain the maximum six-car train operation possible on each line over Broadway at Manhattan Junction and notify the Commission of the results; and further

6. To cause all trains operated on said line to be designated with proper destination signs at the beginning of their run and throughout said run; and further

7. To have the order which shall be made upon this hearing, together with headway tables covering the daily operation of trains, printed in a manner to be approved by the Commission and posted conspicuously in each car operated on said line.

And if such changes, improvements and additions be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said Brooklyn Union Elevated Railway Company be given at least seven days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing

said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held December 24th and 31st.

Adjourned to January 11, 1909.

## **Brooklyn Union Elevated Railroad Company.—Service on Myrtle avenue elevated line.**

**In the Matter  
of the**

**Hearing on motion of the Commission as to the regulations, practices, equipment and service of the BROOKLYN UNION ELEVATED RAILROAD COMPANY in respect to its Myrtle Avenue Line.**

CASE No. 1019,  
HEARING ORDER.  
December 15, 1908.

*It is hereby ordered, That a hearing be had on the 24th day of December, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment and service of the Brooklyn Union Elevated Railroad in respect to the transportation of persons in the First District, upon its Myrtle avenue line, are unreasonable, improper or inadequate, and to determine whether changes in said regulations, practices, equipment or service in the following particulars, at the place or places herein mentioned be just, reasonable, adequate and proper and whether such changes shall be put in force, observed and used on said line of said company; and also to inquire and determine whether said company does not run trains enough or cars enough or possesses motive power enough reasonably to accommodate the traffic transported by or offered for transportation to it or does not run its trains or cars with sufficient frequency; and also to inquire and determine whether improvements, changes or additions to or in tracks or other property or device used by said company ought reasonably to be made, in order to promote the security or convenience of the public or employees, or in order to secure adequate facilities for the transportation of passengers, namely, whether said Brooklyn Union Elevated Railroad Company should be required and directed hereafter to operate its Myrtle avenue line between Park row, Manhattan, and Metropolitan avenue, as follows:*

1. Either to provide on every day, including Sunday, as many seats in each direction past any point as there are passengers

(a) On any four (4) consecutive trains when the scheduled headway does not exceed five (5) minutes;

(b) On any three (3) consecutive trains when the scheduled headway is more than five (5) minutes, but does not exceed ten (10) minutes;

(c) On any two (2) consecutive trains when the scheduled headway is more than ten (10) minutes, but does not exceed fifteen (15) minutes;

(d) On any train when the scheduled headway is more than fifteen (15) minutes; or

2. When as many seats as passengers cannot be provided as described in the foregoing, to operate

(a) As many six-car trains on its lines as possible over Brooklyn Bridge, the number of trains operating on this line to be proportioned to the maximum number of trains that can pass over Brooklyn Bridge as the total number of passengers in such six-car trains on this line is to the total number of passengers in all the trains passing over Brooklyn Bridge; and

(b) In addition, during such times, to provide in each direction past any point between Sands street loop and Metropolitan avenue, either as many seats as there are passengers, in accordance with the foregoing subdivisions 1. (a), 1. (b), 1. (c),

1. (d); or

(c) As many more six-car trains as possible over Myrtle avenue at Hudson avenue, as the total number of passengers in such additional six-car trains is to the total number of passengers in all additional trains originating at Sands street loop, and passing over Myrtle avenue at Hudson avenue; and further

3. At all times to operate trains on said line upon such a schedule that the scheduled headway between through trains on said line shall not exceed thirty (30) minutes at any time between midnight and 6 A. M., and shall not exceed ten (10) minutes at any time between 6 A. M. and midnight; and further

4. Within fifteen days after the service of this order and from time to time thereafter to ascertain the maximum six-car train operation possible on each line over Brooklyn Bridge and over Myrtle avenue at Hudson avenue to notify the Commission of the result; and further

5. To cause all trains operated on said line to be designated with proper destination signs at the beginning of their run and throughout said run; and further

6. To have the order which shall be made upon this hearing, together with headway tables covering the daily operation of trains, printed in a manner to be approved by the Commission and posted conspicuously in each car operated on said line.

And if such changes, improvements and additions be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Union Elevated Railroad Company be given at least seven days' notice of such hearing by service upon it, either personally or by mail, or a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held December 24th and 31st.

Adjourned to January 11, 1909.

### Brooklyn Union Elevated Railroad Company.—Service on Lexington avenue elevated line.

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, practices, equipment and service of the BROOKLYN UNION ELEVATED RAILROAD COMPANY in respect to its Lexington Avenue Line.

CASE No. 1020,  
HEARING ORDER.  
December 15, 1908.

*It is hereby ordered,* That a hearing be had on the 24th day of December, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the office of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment and service of the Brooklyn Union Elevated Railroad Company in respect to the transportation of persons in the First District upon its Lexington avenue line, are unreasonable, improper or inadequate, and to determine whether changes in said regulations, practices, equipment or service in the particulars following, at the place or places herein mentioned would be just, reasonable, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company; and also to inquire and determine whether said company does not run trains enough or cars enough or possess motive power enough reasonably to accommodate the traffic transported by or offered for transportation to it or does not run its trains or cars with sufficient frequency; and also to inquire and determine whether improvements, changes or additions to or in the tracks or other property or device used by said company ought reasonably to be made, in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, namely, whether said Brooklyn Union Elevated Railroad Company should be required and directed hereafter to operate its Lexington avenue line, between Park row, Manhattan, and Cypress Hills, as follows:

1. Either to provide on every day, including Sunday, as many seats in each direction past any point, as there are passengers

(a) On any four (4) consecutive trains when the scheduled headway does not exceed five (5) minutes;

(b) On any three (3) consecutive trains when the scheduled headway is more than five (5), but does not exceed ten (10) minutes;

(c) On any two (2) consecutive trains when the scheduled headway is more than ten (10) minutes, but does not exceed fifteen (15) minutes; and

(d) On any train when the scheduled headway is more than fifteen (15) minutes, or

2. When as many seats as passengers cannot be provided, as prescribed in the foregoing, to operate

(a) As many six-car trains on this line as possible over Brooklyn Bridge, the number of trains operated on this line to be proportioned to the maximum number of trains that can pass over Brooklyn Bridge as the total number of passengers in such six-car trains on this line is to the total number of passengers in all of the trains passing over Brooklyn Bridge; and

(b) In addition, during such times, to provide in each direction past any point between Sands street loops and Cypress Hills either as many seats as there are passengers, in accordance with the foregoing subdivisions 1. (a), 1. (b), 1. (c) and 1. (d); or

(c) As many more six-car trains as possible over Myrtle avenue at Hudson avenue; the number of such additional six-car trains to be proportioned to the maximum number of additional trains that can pass over Myrtle avenue at Hudson avenue, as the total number of passengers in such additional six-car trains is to the total number of passengers in all additional trains originating at Sands street loops and passing over Myrtle avenue at Hudson avenue; and further

3. At all times to operate trains on said line upon such a schedule that the scheduled headway between through trains on said line shall not exceed thirty (30) minutes at any time between midnight and 8 A. M., and shall not exceed ten (10) minutes at any time between 6 A. M. and midnight; and further

4. Within fifteen days after the service of this order and from time to time hereafter to ascertain the maximum six car train operation possible on each line over Brooklyn Bridge and over Myrtle avenue at Hudson avenue and notify the Commission of the results; and further

5. To cause all trains operated on said line to be designated with proper destination signs at the beginning of their run and throughout said run; and further

6. To have the order which shall be made upon this hearing, together with headway tables covering the daily operation of trains printed in a manner to be approved by the Commission and posted conspicuously in each car operated on said line.

And if such changes, improvements and additions be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Union Elevated Railroad Company be given at least seven days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held December 24th and 31st.

Adjourned to January 11, 1909.

## Central Park, North and East River Railroad Company.—

### Service on Fifty-ninth street crosstown line.

#### In the Matter of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and equipment of CENTRAL PARK, NORTH AND EAST RIVER RAILROAD COMPANY, and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, Receivers, in the particulars hereinbelow mentioned.

ORDER FOR HEARING  
No. 649.  
July 23, 1908.

*It is hereby ordered,* That a hearing be had on the 1st day of August, 1908, at 10:00 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City of New York, State of New York, to inquire whether the regulations, equipment, appliances and service of the Central Park, North and East River Railroad Company and of Adrian H. Joline and Douglas Robinson, Receivers, in respect to transportation of persons in the first district on the roads and property of said Company, are unjust, unreasonable, improper or inadequate and whether said Company or said Receivers do not run cars enough or with sufficient frequency or possess or operate motive power enough reasonably to accommodate the passenger traffic transported by it or them or offered for transportation to it or them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation and is and will be just, reasonable, proper and adequate to direct that the service of the said Company and of said Receivers be increased and supplemented at the points and times and in the particulars following, that is to say:

1. By reducing the headway of cars operated on week days by electricity on the Fifty-ninth Street Crosstown line from the present schedule as of July 1, 1908, to a headway of one minute, between 6:30 A. M. and 4:30 P. M., and to forty seconds between 4:30 P. M. and 6:30 P. M., and to one minute between 6:30 P. M. and 9:30 P. M. of each day.

2. By reducing the headway of cars operated by electricity upon the said Fifty-ninth Street Crosstown line from the Sunday schedule as of July 1, 1908, so that the said headway shall be as follows: Between 9:40 A. M. and 11 P. M., one minute.

And if such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said Central Park, North and East River Railroad Company and Adrian H. Joline and Douglas Robinson, Receivers, be given at least two days' notice of such hearing by service upon it and them, either personally or by mail, of certified copies of this order and that at such hearing said Company and said Receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held August 1st, 4th, 5th, 6th, 13th and 27th.

**Coney Island and Brooklyn Railroad Company.—Insufficient service, DeKalb avenue line at Borough hall.**

COMPLAINT OF WALTER RAPPELYEA DAVIS  
against

CONEY ISLAND AND BROOKLYN RAILROAD COMPANY.

Complaint Order No. 281 (see form, note 1) issued February 21st.

**Coney Island and Brooklyn Railroad Company.—Service on DeKalb avenue line.**

Hearing Order No. 384.  
Hearing Order No. 384A.  
Opinion of Commissioner Bassett.

In the Matter  
of the

Hearing on motion of the Commission on the question of improvements in and additions to the service and equipment of the CONEY ISLAND AND BROOKLYN RAILROAD COMPANY.

HEARING ORDER No. 384.  
March 31, 1908.

"Service on DeKalb Avenue Line."

*It is hereby ordered.* That a hearing be had on the 14th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire,

1. Whether the regulations, practices, equipment, appliances and service of the Coney Island and Brooklyn Railroad Company in respect to transportation of persons in the first district upon its DeKalb avenue line, are unjust, unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether the changes, additions and improvements in regulations, practices, equipment and appliances and service of said company, as hereinafter set forth, are such as will be just, reasonable, adequate and proper, and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

(a) Whether said Coney Island and Brooklyn Railroad Company should be directed to operate all cars passing the intersection of DeKalb avenue and Gold street bound for Park Row between the hours of 6:00 and 9:00 A. M., so that they shall traverse instead of Fulton and Washington streets, the following streets: Gold street, Willoughby street, Jay street, Sands street and then to the bridge.

(b) Whether said company should be directed to operate its cars leaving Park Row loops between the hours of 5:00 and 7:00 P. M. so that they shall run by way of Prospect (under the bridge), Adams, Sands, Jay, Willoughby and Gold streets, to DeKalb avenue, instead of using Washington and Fulton streets as at present.

(c) Whether said company should be directed to operate those of the additional cars indicated below under 11, which leaves the barns between the hours of 5:30 and 8:30 A. M., so that they shall run to High street via DeKalb avenue, Fulton street and Washington street, and to operate those of the additional cars below mentioned which start from the barns between the hours of 11:30 A. M. and 1:30 P. M. so that they shall run to Park Row.

And to inquire

2. Whether the said company runs cars enough and with sufficient frequency, or possesses and operates motor power enough reasonably to accommodate passenger traffic transported by it or offered to it for transportation, and if such be found not to be the fact, then to determine whether it is reasonably necessary, in order to accommodate and transport the said traffic transported or offered for transportation, and whether it is and will be just, reasonable, proper and adequate, to direct that the service of the said Coney Island and Brooklyn Railroad Company on its DeKalb avenue line be increased and supplemented at the times and in the particulars following, that is to say:

a. Leaving the depot at DeKalb and Covert avenues:

1. By an increase between the hours of 5:30 A. M. and 6:00 A. M. of two cars or from five to seven cars.

2. By an increase between the hours of 6:00 A. M. and 6:30 A. M. of two cars or from ten to twelve cars.

3. By an increase between the hours of 6:30 A. M. and 7:00 A. M. of four cars or from eighteen to twenty-two cars.

4. By an increase between the hours of 7:00 A. M. and 7:30 A. M. of nine cars or from nineteen to twenty-eight cars.

5. By an increase between the hours of 7:30 A. M. and 8:00 A. M. of ten cars or from eighteen to twenty-eight cars.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Coney Island and Brooklyn Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

The following order superseded Order No. 384 and the hearings were had under it.

#### HEARING ORDER No. 384A.

April 7, 1908.

*It is hereby ordered*, That a hearing be had on the 14th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York, to inquire

1. Whether the regulations, practices, equipment, appliances, and service of the Coney Island and Brooklyn Railroad Company in respect to transportation of persons in the First District upon its DeKalb avenue line, are unjust, unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether the changes, additions, and improvements in regulations, practices, equipment, and appliances and service of said company, as herinafter set forth are such as will be just, reasonable, adequate and proper, and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

(a) Whether said Coney Island and Brooklyn Railroad Company should be directed to operate all cars passing the intersection of DeKalb avenue and Gold street bound for Park Row between the hours of 6:00 and 9:00 A. M. so that they shall traverse, instead of Fulton and Washington streets, the following streets: Gold street, Willoughby street, Jay street, Sands street, and then to the Bridge;

(b) Whether said company should be directed to operate its cars leaving Park Row loops between the hours of 5:00 and 7:00 P. M. so that they shall run by way of Prospect (under the Bridge), Adams, Sands, Jay, Willoughby and Gold streets, to DeKalb avenue, instead of using Washington and Fulton streets as at present;

(c) Whether said company should be directed to operate those of the additional cars indicated below under II, which leave the barns between the hours of 5:30 and 8:30 A. M., so that they shall run to High street via DeKalb avenue, Fulton street

and Washington street; and to operate those of the additional cars below mentioned which start from the barns between the hours of 11:30 A. M. and 1:30 P. M. so that they shall run to Park Row.

And to inquire:

II. Whether the said company runs cars enough and with sufficient frequency, or possesses and operates motor power enough reasonably to accommodate passenger traffic transported by it or offered to it for transportation, and if such be found not to be the fact, then to determine whether it is reasonably necessary, in order to accommodate and transport the said traffic transported or offered for transportation, and whether it is and will be just, reasonable, proper and adequate to direct that the service of the said Coney Island and Brooklyn Railroad Company on its DeKalb avenue line be increased and supplemented at the time and in the particulars following, that is to say:

Leaving the depot at DeKalb and Covert avenues:

1. By an increase between the hours of 5:30 A. M. and 6:00 A. M. of 2 cars, or from 5 to 7 cars.

2. By an increase between the hours of 6:00 A. M. and 6:30 A. M. of 2 cars, or for from 10 to 12 cars.

3. By an increase between the hours of 6:30 A. M. and 7:00 A. M. of 4 cars, or from 18 to 22 cars.

4. By an increase between the hours of 7:00 A. M. and 7:30 A. M. of 9 cars, or from 19 to 28 cars.

5. By an increase between the hours of 7:30 A. M. and 8:00 A. M. of 10 cars, or from 18 to 28 cars.

6. By an increase between the hours of 8:00 A. M. and 8:30 A. M. of 4 cars, or from 19 to 23 cars.

Of the above totals the same number as at present shall operate across Brooklyn Bridge, via the prescribed route.

7. By an increase between the hours of 11:30 A. M. and 12:30 P. M. of 3 cars, or from 15 to 18 cars.

8. By an increase between the hours of 12:30 and 1:30 P. M. of 3 cars, or from 17 to 20 cars.

The following increase for the eastbound traffic, the additional cars between the hours of 4:45 and 6:45 P. M. to start from High street and run to Covert avenue, via Washington street, Fulton street and DeKalb avenue. The additional cars between the hours of 9:30 and 12:00 P. M. to start from Park Row loops and run to the Covert avenue depot via Washington street, Fulton street and DeKalb avenue.

9. By an increase between the hours of 4:45 and 5:15 P. M. of 5 cars, or from 23 to 28 cars.

10. By an increase between the hours of 5:15 and 5:45 P. M. of 10 cars, or from 18 to 28 cars.

11. By an increase between the hours of 5:45 and 6:15 P. M. of 9 cars, or from 19 to 28 cars.

12. By an increase between the hours of 6:15 and 6:45 P. M. of 13 cars, or from 15 to 28 cars.

Of the above totals the same number as at present shall operate across Brooklyn Bridge, but by the route elsewhere prescribed.

13. By an increase between the hours of 9:30 and 10:30 P. M. of 4 cars, or from 14 to 18 cars.

14. By an increase between the hours of 10:30 and 11:30 P. M. of 3 cars, or from 15 to 18 cars.

15. By an increase between the hours of 11:30 and 12:00 P. M. of 2 cars, or from 6 to 8 cars.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said Coney Island and Brooklyn Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held April 14th, 21st, 28th and May 4th.

OPINION OF COMMISSION.  
(Adopted May 29, 1908.)

COMMISSIONER BASSETT:—

Following numerous complaints regarding alleged inadequate service on the DeKalb avenue line of the Coney Island and Brooklyn Railroad Company, Hearing Order No. 384, later replaced by No. 384a, was made. The order directed the inquiry to cover a proposed change of route of cars during rush hours from Fulton and Washington streets to Gold, Willoughby, Jay and Sands streets, and also an increase of service. The testimony shows that between 6 A. M. and 9 A. M. about

50 per cent. of the total number of passengers leave the cars between Gold street and the Brooklyn Bridge, thus indicating that if the present route were changed a far greater proportion of passengers would be inconvenienced than those benefited. The same finding applies to the evening rush hours. In my opinion it would be unreasonable to require these cars to operate through side streets instead of through Fulton street.

The testimony submitted by the inspection department covering observations made during February and March shows very heavy overcrowding during rush hours. In the morning rush hours numerous cars with seating capacity of thirty-six were observed with loads of from fifty-five to sixty-five passengers, and in the evening between 5:30 and 6:30 cars with the same seating capacity had loads of seventy-seven passengers at Gold street. Since the hearing order was issued open cars with seating capacity of sixty passengers have been placed in operation on this line. With the open cars in operation it appears that as many seats, and in some periods more seats, will be provided than the number suggested in the hearing order. If the company maintains the present schedule the traffic will be properly handled with the open cars, and assurance has been given by the company that the present schedule will be maintained.

Active rehabilitation work is proceeding on the cars of this company, and it is quite likely that when the operation of closed cars begins in the fall a better service can be given on this line than was given the past winter. If it becomes necessary to take this subject up anew in the fall the data collected and tabulations made by the transit inspection department will facilitate a proper and quick determination at that time.

As this was a Commission hearing to investigate the general subject of service on the DeKalb avenue line, it is not requisite that an order be made.

**Coney Island and Brooklyn Railroad Company.—Service on Covert avenue and Stanhope street lines.**

Complaint Order No. 340.  
Hearing Order No. 476.  
Dismissal Order No. 542.

**COMPLAINT OF LEONARD ROSE**

*against*

**CONEY ISLAND AND BROOKLYN RAILROAD COMPANY.**

Complaint Order No. 340 (see form, note 1) issued March 13th.

Hearing Order No. 476 (see form, note 3) issued May 12th.

Hearing held May 29th.

The following dismissal order was issued:

LEONARD ROSE, <i>against</i> <b>CONEY ISLAND AND BROOKLYN RAILROAD COMPANY,</b> <i>Defendant.</i> "Service on Covert Avenue and Stanhope Street Lines."	<i>Complainant,</i> DISMISSAL ORDER No. 542. May 29, 1908.
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After Order for Hearing No. 476, dated May 12, 1908.

This matter coming on upon the report of the hearing had herein on the 26th day of May, 1908, and it appearing that said hearing was held pursuant to an order of this Commission No. 476, dated May 12, 1908, upon the complaint and

## 434 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

answer herein, and that said order was duly served upon Leonard Rose, complainant, and upon the Coney Island and Brooklyn Railroad Company, defendant, and that said service was by said company duly acknowledged, and that said hearing was held by and before the Commission on the matters in said complaint, answer and order specified, on the 26th day of May, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and J. J. Kuhn, Esq., attorney, of Dykman, Oeland & Kuhn, attorneys, appearing in person, and testimony having been taken upon said hearing, and it having been made to appear after the proceedings of said hearing that the changes desired by the complainant in the service on Covert avenue and Stanhope street are not necessary at this time, and that it would not be advisable at this time to make an order requiring any change in the service mentioned:

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, That said complaint be and the same hereby is dismissed and that this order be filed in the office of the Commission; and it is further

*Ordered*, That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by said complaint and answer or the proceedings thereon.

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### Coney Island and Brooklyn Railroad Company.—Inadequate service on the DeKalb avenue line.

#### COMPLAINT OF THE CITY CLUB OF NEW YORK against

CONEY ISLAND AND BROOKLYN RAILROAD COMPANY.

Complaint Order No. 672 (see form, note 1) issued August 11th.

The company answered stating that it was endeavoring to correct the conditions complained of by running eight additional cars daily between 5:30 and 6:30 P. M.; that if this did not relieve the situation it would add more cars.

The complaint was withdrawn.

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### Dry Dock, East Broadway and Battery Railroad Company.— Increase of service on the Grand street crosstown line and Grand and Desbrosses line to Brooklyn.

Hearing Order No. 397.  
Opinion of Commissioner Maltbie.  
Final Order No. 421.  
Final Order No. 472.

#### In the Matter of the

Hearing on the motion of the Commission on the question of improvement in and addition to the service of the DRY DOCK, EAST BROADWAY AND BATTERY RAILROAD COMPANY and of F. W. Whitridge, as Receiver of the said company, in respect to the GRAND STREET CROSS-TOWN LINE and in respect to the GRAND AND DESBROSSES LINE to Brooklyn.

HEARING ORDER  
No. 397.  
April 3, 1908.

*It is hereby ordered*. That a hearing be had on the 13th day of April, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, in the borough of Manhattan, city and State of New York, to inquire whether the regula-

tions, practices and service of the Dry Dock, East Broadway and Battery Railroad Company, or of F. W. Whitridge as receiver of the Dry Dock, East Broadway and Battery Railroad Company, in respect to transportation of persons in the First District on the Grand street crosstown line and on the Grand and Desbrosses line to Brooklyn are unreasonable, improper or inadequate, and whether the said Dry Dock, East Broadway and Battery Railroad Company or the said F. W. Whitridge, as receiver of the said railroad, run cars enough or with sufficient frequency or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation and is and will be just, reasonable, proper and adequate to direct that the service of the said Dry Dock, East Broadway and Battery Railroad Company or of F. W. Whitridge, as its receiver, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sunday, over every point of the Grand street crosstown line and every point of the Grand and Desbrosses line to Brooklyn either

(a) A sufficient number of cars in each direction past any point of observation to provide, during every fifteen-minute period of the day or night, a ten per cent (10%) excess of seats for passengers at that point; the number of cars passing any point to be, however, never less than six (6) cars per hour in each direction, or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Grand street crosstown line and on the Grand and Desbrosses line to Brooklyn as may be just and reasonable.

3. That on the Grand street crosstown line all westbound cars from Grand street ferry run at least to Broadway and all eastbound cars run at least to the ferry.

4. That on the Grand and Desbrosses line to Broadway all westbound cars from the Brooklyn end of the Williamsburg Bridge run at least to Broadway, and all eastbound cars run at least to the Brooklyn end of the Williamsburg Bridge.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said Dry Dock, East Broadway and Battery Railroad Company or F. W. Whitridge, its receiver, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receiver be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held April 13th, 14th and 16th.

#### OPINION OF COMMISSION.

(Adopted April 17, 1908.)

#### COMMISSIONER MALTBY:—

The streetcar line affected by this case includes the cars operated from the Grand street ferry upon the East river, along Grand street, and Vestry street to the Desbrosses street ferry. There is also a branch line running from the Desbrosses street ferry along Grand street and via Essex or Clinton street and the Williamsburg Bridge to the plaza at the easterly end of the bridge.

The evidence presented at the hearings shows that this line, including the branch to the Brooklyn plaza of the Williamsburg Bridge, is one of the most congested lines that has been examined by the transportation bureau of the Commission. Indeed, at certain hours the overloading is more excessive than has been found upon any other line so far examined. The need, therefore, of improved service is extremely great and relief ought to be had immediately. Mr. Maher, who is manager of the road under Mr. F. W. Whitridge, the receiver, has testified that the company does not have a sufficient number of cars to provide adequate service. A contract has been made for twenty-five (25) new cars for use upon this road, and delivery is expected about the first of May. It is perhaps impossible, therefore, to provide full relief before that date and the order is to take effect then.

The requirements of the order in other respects follow the principles laid down in the order relating to the improvement of service on the Twenty-third Street line.

In the opinion in that case, I discussed in a general way the principles involved and it is not necessary to repeat the statements there made, but they apply with equal force to the Grand Street line. It is considered that fifteen cars in every fifteen-minute period will provide adequate service, but it may be that the number of passengers will so increase with the improved service that a larger number of cars must be run, but for the present I consider the maximum set sufficient. The general traffic conditions will not prevent more cars being run.

Thereupon the following final order was issued:

**FINAL ORDER No. 421.**

April 17, 1908.

This matter coming on upon the report of the hearing had herein on April 13, 14 and 16, 1908, and it appearing that the said hearing was held pursuant to Hearing Order No. 397 of this Commission, dated April 3, 1908, and returnable on April 13, 1908, at 2:30 P. M., and it appearing that said order was duly served upon said F. W. Whitridge, as receiver of the Dry Dock, East Broadway and Battery Railroad Company on the 4th day of April, 1908, and that such service was by him duly acknowledged, and that said Dry Dock, East Broadway and Battery Railroad Company had due notice of said hearing and that said hearing was had by and before the Commission on the matters embraced in said order for hearing on the 13th, 14th and 16th days of April, 1908, before Mr. Commissioner Maltbie, presiding; Harry M. Chamberlain, Esq., appearing for the Commission; Edward A. Maher, Esq., general manager, appearing for said railroad company and for said receiver, and proof having been taken upon said hearing, and it being made to appear after the proceedings on said hearing that the service of said railroad company and of said F. W. Whitridge, as receiver of said company, in respect to the transportation of persons upon its lines, the Grand Street Crosstown line and the Grand and Desbrosses line to Brooklyn, in the city and State of New York, are unreasonable, improper and inadequate in that said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge, as receiver of said company, do not operate cars enough upon said lines or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that it would be just, reasonable and proper that the said service of the said Dry Dock, East Broadway and Battery Railroad Company and of F. W. Whitridge, as its receiver, be increased, supplemented and changed in the particulars hereinafter set forth;

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is ordered, as follows:

1. That said Dry Dock, East Broadway and Battery Railroad Company, and said F. W. Whitridge, as receiver of said company, be, and they hereby are, directed and required to operate daily, including Sundays, over every point of said Grand Street Crosstown line and said Grand and Desbrosses line to Brooklyn, either:

- (a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen minute period of the day or night a ten per cent. (10 per cent.) excess of seats over passengers at that point, the number of cars passing any point to be, however, never less than six (6) cars per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen minute period in which provisions of subdivision (a) above are not complied with.

2. That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge as receiver of said company, be and they hereby are directed and required to run on said Grand street crosstown line all westbound cars from Grand street ferry at least to Broadway, and all eastbound cars at least to the ferry.

3. That said Dry Dock, East Broadway and Battery Railroad Company, and said F. W. Whitridge, as receiver of said company, be and they hereby are directed and required to run on the Grand and Desbrosses line to Brooklyn all westbound cars from the Brooklyn end of the Williamsburg Bridge at least to Broadway, and all eastbound cars at least to the Brooklyn end of the Williamsburg Bridge.

4. That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge as receiver of said company be and they hereby are directed and required to institute such changes, improvements and additions by or before the 1st day of May, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

5. It is further ordered, That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge as receiver of said company notify the Public Service Commission for the First District within five (5) days after service of this order upon them whether the terms of this order are accepted and will be obeyed.

## FINAL ORDER No. 472, AMENDING FINAL ORDER No. 421.

May 8, 1908.

Final order No. 421 having been made and served herein dated the 17th day of April, 1908, which contained the following recital: "Edward A. Maher, Esq., General Manager, appearing for said railroad company and for said Receiver, and it having been made to appear by letter of F. W. Whitridge, Receiver of said railroad company, dated April 27, 1908, and addressed to the Secretary of the Commission, that said Edward A. Maher attended the hearing as a witness at the request of the Commission and did not appear for said railroad company or for said receiver, and that it is suitable and proper that said Order No. 421 be changed and modified accordingly;

Now, on motion of George S. Coleman, Esq., counsel to Commission, it is

*Ordered*, That said Final Order No. 421 be, and the same is, hereby changed and modified *nunc pro tunc* as of the 17th day of April, 1908, so as to read as follows:

## FINAL ORDER No. 421.

This matter coming upon upon the report of the hearing had herein on April 13, 14 and 16, 1908, and it appearing that the said hearing was held pursuant to Hearing Order No. 397 of this Commission, dated April 3, 1908, and returnable on April 13, 1908, at 2:30 P. M., and it appearing that said order was duly served upon said F. W. Whitridge as receiver of the Dry Dock, East Broadway and Battery Railroad Company on the 4th day of April, 1908, and that such service was by him duly acknowledged, and that said Dry Dock, East Broadway and Battery Railroad Company had due notice of said hearing and that said hearing was had by and before the Commission on the matters embraced in said order for hearing on the 13th, 14th and 16th days of April, 1908, before Mr. Commissioner Maltrie presiding, Harry M. Chamberlain, Esq., appearing for the Commission, and no one appearing for said railroad company or for F. W. Whitridge, receiver of said company, and proof having been taken upon said hearing, and it being made to appear after the proceedings on said hearing that the service of said railroad company and of said F. W. Whitridge, as receiver of said company, in respect to the transportation of persons upon its lines, the Grand Street Crosstown line and the Grand and Desbrosses line to Brooklyn, in the city and State of New York, are unreasonable, improper and inadequate in that said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge as receiver of said company do not operate cars enough upon said lines or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that it would be just, reasonable and proper that the said service of the said Dry Dock, East Broadway and Battery Railroad Company and of F. W. Whitridge as its receiver be increased, supplemented and changed in the particulars hereinafter set forth:

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, as follows:

1. That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge, as receiver of said company, be and they hereby are directed and required to operate daily, including Sunday, over every point of said Grand Street Crosstown line and said Grand and Desbrosses line to Brooklyn, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a ten per cent. (10%) excess of seats over passengers at that point, the number of cars passing any point to be, however, never less than six (6) cars per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

2. That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge, as receiver of said company, be and they hereby are directed and required to run on said Grand Street Crosstown line all westbound cars from Grand Street Ferry at least to Broadway, and all eastbound cars at least to the Ferry.

3. That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge, as receiver of said company, be and they hereby are directed and required to run on the Grand and Desbrosses line to Brooklyn all westbound cars from the Brooklyn end of the Williamsburg Bridge at least to Broadway, and all eastbound cars at least to the Brooklyn end of the Williamsburg Bridge.

4. That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge, as receiver of said company, be and they hereby are directed and required to institute such changes, improvements and additions by or before the 1st day of May, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

5. It is further ordered, That said Dry Dock, East Broadway and Battery Railroad Company and said F. W. Whitridge, as receiver of said company, notify the Public Service Commission for the First District within five (5) days after service of this order upon them whether the terms of this order are accepted and will be obeyed.

**Interborough Rapid Transit Company.—Service of the Third Avenue Elevated Road to South Ferry at midday.**

Hearing Order No. 241.  
Dismissal Order No. 290.

**COMPLAINT OF WHIDDEN GRAHAM**

*against*

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Hearing Order No. 241 (see form, note 3), issued February 4th.

Hearing held February 17th.

The following dismissal order was issued:

<b>WHIDDEN GRAHAM,</b> <i>against</i> <b>INTERBOROUGH RAPID TRANSIT COMPANY,</b>	<i>Complainant,</i> <i>Defendant.</i>	<b>FINAL ORDER No. 290.</b> <i>February 25, 1908.</i>
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This matter coming on upon the report of the hearing had herein on February 17, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission, No. 241, made the 4th day of February, 1908, upon the complaint and answer herein and that the said order was duly served upon Whidden Graham, complainant, and upon the Interborough Rapid Transit Company, and that the said service was by said company duly acknowledged and that the said hearing was held by and before the Commission on the matters in said complaint, answer and order specified, on February 17, 1908, at which hearing Mr. Commissioner Eustis presided and Alfred A. Gardner, Esq., appearing for the Interborough Rapid Transit Company and Arthur DuBois, Esq., assistant counsel, appearing for the Public Service Commission for the First District, and there being no appearance on behalf of the complainant.

Now, on motion of Alfred A. Gardner, Esq., attorney for the Interborough Rapid Transit Company, it is

*Ordered*, That the said complaint be and the same hereby is dismissed and that this order be filed in the office of the Commission, and it is

*Further Ordered*, That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by said complaint and answer or the proceedings thereon.

**Interborough Rapid Transit Company.—Service on the Ninth Avenue Elevated.**

In the Matter  
of the

Hearing on the motion of the Commission on the question of Improvements in and additions to the service and equipment of the INTERBOROUGH RAPID TRANSIT COMPANY in the particulars herein below mentioned.

**DISMISSAL ORDER**  
No. 371.  
*March 27, 1908.*

Ninth Avenue Elevated.

An order, known as Order No. 135 having been duly made by the Commission on January 6, 1908, directing that a hearing be had to inquire whether the service of the Interborough Rapid Transit Company should not be increased and supplemented on the local tracks of the Ninth avenue elevated line, and said order having been duly served on the Interborough Rapid Transit Company, and said hearing having been duly had in pursuance thereof before the Commission on December 17, 1907, December 21, 1907, January 25, 1908, February 4, 1908,

## ORDERS OF THE COMMISSION ISSUED IN 1908. . . 439

and February 17, 1908, Commissioner Eustis presiding, Mr. Henry H. Whitman appearing, for the Commission, and Mr. Alfred A. Gardner appearing for the Interborough Rapid Transit Company, and it appearing that since the service of said Order No. 135 the passenger traffic on the local tracks of the Ninth avenue elevated line has so far fallen off that the present service thereon is reasonable and adequate, it is

**Ordered**, That this proceeding be and the same hereby is dismissed, and that this order be filed in the office of the Commission; and it is further

**Ordered**, That this order shall be without prejudice to an order for a further hearing and action thereon by the Commission in respect to any of the matters covered by said Order No. 135 or by the proceedings thereon.

### Interborough Rapid Transit Company.— Increase in number of trains on Second Avenue Elevated.

Final Order No. 361.  
Rehearing Order No. 392.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and equipment of the INTERBOROUGH RAPID TRANSIT COMPANY in the particulars herein below mentioned.

ORDER No. 361.  
March 24, 1908.

Second Avenue Elevated.

Under Order for Hearing No. 151, made December 11, 1907.

This matter coming on upon the report of the hearing had herein on the 23d day of December, 1907, and the adjournments therof, and it appearing that the said hearing was held by and pursuant to an order of this Commission, No. 151, made December 11, 1907, and returnable on the 23d day of December, 1907, and that the said order was duly served upon the Interborough Rapid Transit Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified, on the 23d day of December, 1907, and by adjournment duly had on the 9th day of January, 1908, and by adjournment duly had on the 21st day of January, 1908, and by adjournment duly had on the 29th day of January, 1908, and by adjournment duly had on the 5th day of February, 1908, and by adjournment duly had on the 13th day of February, 1908, Mr. Commissioner Eustis presiding at each of said sessions, and proof being taken, and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission at each of said sessions, and Alfred A. Gardner, Esq., and Alfred E. Mudge, Esq., appearing for said Interborough Rapid Transit Company.

Now it being made to appear, after the proceeding upon the said hearing, that the service of the Interborough Rapid Transit Company on its Second avenue elevated line is unreasonable and inadequate in that said company does not operate trains enough or cars enough reasonably to accommodate passenger traffic transported by it or offered for transportation to it at the times hereinafter specified, and it appearing that it would be just, reasonable and proper that the said service of the Interborough Rapid Transit Company, on its Second avenue elevated line, should be supplemented in the particulars hereinafter set forth at the points and at the times so hereinafter set forth.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

**Ordered**, That said Interborough Rapid Transit Company increase its said service on its Second avenue elevated line so that said company, daily except Saturday afternoons, Sundays and legal holidays, shall operate at least as many trains and cars as are specified in the following schedules at the hours and in the manner provided in said schedules, to wit:

#### SOUTHBOUND SERVICE.

1. At least forty-nine (49) trains of at least seven (7) cars each and at least twenty-one (21) trains of at least five (5) cars, each, southbound, past Thirty-fourth street station between 7:00 A. M. and 9:00 A. M., said seven cars trains to be operated from One Hundred and Twenty-ninth street, or beyond, to South Ferry.

## NORTHBOUND SERVICE.

2. At least sixteen (16) trains of at least three (3) cars each, northbound, past Forty-second street station between 3:00 P. M. and 4:00 P. M., said trains to be operated from South Ferry to One Hundred and Twenty-ninth street or beyond.

3. At least three (3) trains of at least three (3) cars each, and at least fourteen (14) trains of at least five (5) cars each, northbound, past Forty-second street station between 4:00 P. M. and 5:00 P. M., said trains to be operated from South Ferry to One Hundred and Twenty-ninth street, or beyond.

4. At least forty-eight (48) trains of at least seven (7) cars each and at least twenty (20) trains of at least (5) cars each, northbound, past Forty-second street station between 5:00 P. M. and 7:00 P. M., said seven car trains to be operated from South Ferry to One Hundred and Twenty-ninth street, or beyond, and said five car trains to be operated from a point as far south as Canal street station to Freeman street.

5. At least two (2) trains of at least five (5) cars each, and at least nine (9) trains of at least three (3) cars each, northbound, past Forty-second street station between 9 P. M. and 10:00 P. M., said trains to be operated from South Ferry to One Hundred and Twenty-ninth street, or beyond. And it is further

*Ordered*, That this order shall take effect on or before the 5th day of April, 1908, and shall remain in force until modified by the further order of this Commission. And it is further

*Ordered*, That on or before the 30th day of March, 1908, the Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

## REHEARING ORDER No. 392.

April 3, 1908.

An order, No. 361, having been made and filed herein on March 24, 1908, under and pursuant to an order for a hearing No. 151, made December 11, 1907, and thereafter having been duly served upon the Interborough Rapid Transit Company, the same to take effect by or before the 5th day of April, 1908, and in and by the said order the Interborough Rapid Transit Company having been required to notify this Commission on or before the 30th day of March, 1908, whether the terms of said Order No. 361 are accepted and will be obeyed, and the said Interborough Rapid Transit Company having on March 30th applied in writing to this Commission for a rehearing in respect to the matters contained in said Order No. 361, and sufficient reason for said rehearing having been made to appear,

*Ordered*, That said request for rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 361 entered and filed on March 24, 1908, be held on the 14th day of April, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of Order No. 361, whether the original Order No. 361 or any part thereof is in any respect unjust or unwise, and whether the said Order No. 361 should be abrogated, changed or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said Interborough Rapid Transit Company be given at least five days' notice of such hearing by service upon it either personally or by mail, of a certified copy of this order, and that at such rehearing said Company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further Ordered*, That the time of the Interborough Rapid Transit Company within which to comply with the terms of said Order No. 361 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held April 14th.

**Interborough Rapid Transit Company.—Service on the Third Avenue Elevated.**

Final Order No. 221.  
 Rehearing Order No. 246.  
 Final Order No. 337.  
 Opinion of Commissioners Eustis and Maltbie.  
 Suspension Order No. 569.  
 Extension Order No. 617.  
 Extension Order No. 630.  
 Extension Order No. 699.  
 Extension Order No. 814.

In the Matter  
of the

Hearing on the motion of the Commission on the question of Improvements in and Additions to the Service and Equipment of the INTERBOROUGH RAPID TRANSIT COMPANY in the particulars herein below mentioned.

ORDER No. 221.  
January 28, 1908.

Third Avenue Elevated.

Under Order for Hearing No. 145, Made December 9, 1907.

This matter coming on upon the report of the hearing had herein on the 20th day of December, 1907, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order of this Commission No. 145, made December 9, 1907, and returnable on the 20th day of December, 1907, and that the said order was duly served upon the Interborough Rapid Transit Company and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified, on the 20th day of December, 1907, and by adjournment duly had on the 26th day of December, 1907, and by adjournment duly had on the 21st day of January, 1908, and that at each of said sessions Mr. Commissioner Eustis presided and proof being taken and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission at each of said sessions, and Alfred A. Gardner, Esq., appearing for said Interborough Rapid Transit Company.

Now, it being made to appear after the proceedings upon the said hearing that the service of the said Interborough Rapid Transit Company in the transportation of persons on its Third Avenue Elevated line, in the First District, has been and is, at the points and at the time set forth, as follows, to wit:

SOUTHBOUND TRAINS PASSING THIRTY-FOURTH STREET STATION.

- From 6:30 to 7:00 A. M., 16 trains of 7 cars each, 112 cars.
- From 7:00 to 7:30 A. M., 20 trains of 7 cars each, 140 cars.
- From 7:30 to 8:00 A. M., 26 trains of 7 cars each, 182 cars.
- From 8:00 to 8:30 A. M., 24 trains of 7 cars each, 168 cars.
- From 8:30 to 9:00 A. M., 23 trains of 7 cars each, 161 cars.
- From 9:00 to 9:30 A. M., 16 trains of 7 cars each, 112 cars.

NORTHBOUND TRAINS PASSING FORTY-SECOND STREET STATION.

- From 4:30 to 5:00 P. M., 14 trains of 7 cars each, 98 cars.
- From 5:00 to 5:30 P. M., 18 trains of 7 cars each, 126 cars.
- From 5:30 to 6:00 P. M., 23 trains of 7 cars each, 161 cars.
- From 6:00 to 6:30 P. M., 23 trains of 7 cars each, 161 cars.
- From 6:30 to 7:00 P. M., 22 trains of 7 cars each, 154 cars.
- From 7:00 to 7:30 P. M., 1 train of 5 cars,  
14 trains of 7 cars each, 103 cars.

And it further appearing that the said service is unreasonable and inadequate, in that said company does not operate trains enough or cars enough reasonably to accommodate the passenger traffic transported by it or offered for transportation to it at the times hereinafter specified, and it appearing that it would be just, reasonable and proper that the said service of the Interborough Rapid Transit Company should be supplemented in the particulars hereinafter set forth, at the points and at the times so hereinafter set forth:

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is Ordered, as follows, to wit:

That the said Interborough Rapid Transit Company increase its said service upon its Third Avenue Elevated line in the particulars and by the means hereinafter stated and at the times hereinafter set forth, except on Saturday afternoons, Sundays and holidays, to wit:

#### SOUTHBOUND SERVICE.

1. Southbound at Thirty-fourth street, from 7:00 to 7:30 A. M., by an increase of 35 cars operated in five trains of 7 cars each, 4 of said trains to be added to the City Hall service and 1 to the South Ferry service.
2. Southbound at Thirty-fourth street, from 8:00 to 8:30 A. M., by an increase of 1 train of seven cars to be added to the City Hall service.
3. Southbound at Thirty-fourth street from 8:30 to 9:00 A. M., by an increase of 2 trains of 7 cars each to be added to the City Hall service.

#### NORTHBOUND SERVICE.

1. Northbound at Forty-second street from 4:30 to 5:00 P. M., by an increase of 1 train of 7 cars to be added to the Bronx Park service.
2. Northbound at Forty-second street from 5:00 to 5:30 P. M., by an increase of five trains of 7 cars each, 4 of said trains to be added to the Bronx Park service and 1 to the Harlem service.
3. Northbound at Forty-second street from 5:30 to 6:00 P. M., by an increase of 2 trains of 7 cars each to be added to the Bronx Park service.
4. Northbound at Forty-second street from 6:00 to 6:30 P. M., by an increase of 2 trains of 7 cars each to be added to the Bronx Park service.
5. Northbound at Forty-second street from 6:30 to 7:00 P. M., by an increase of 3 trains of 7 cars each to be added to the Bronx Park service.
6. Northbound at Forty-second street from 7:00 to 7:30 P. M., by an increase of 1 train of 7 cars to be added to the Bronx Park service.

And it is further Ordered, That this order shall take effect by or before the 10th day of February, 1908, and it is

Further Ordered, That on or before the 5th day of February, 1908, the Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

#### REHEARING ORDER No. 246.

February 7, 1908.

An order, No. 221, having been made and filed herein on January 28, 1908, under and pursuant to an order for a hearing No. 145, made December 9, 1907, and thereafter having been duly served upon the Interborough Rapid Transit Company, the same to take effect by or before the 10th day of February, 1907, and in and by the said order the said Interborough Rapid Transit Company having been required to notify this Commission on or before the 5th day of February, 1908, whether the terms of said Order No. 221 are accepted and will be obeyed, and the said Interborough Rapid Transit Company having on January 5th applied in writing to this Commission for a rehearing in respect to the matters contained in said Order No. 221, and sufficient reason for said rehearing having been made to appear,

Ordered. That said request for rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 221, entered and filed on January 28, 1908, be held on the 17th day of February, 1908, at 11 in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the Order No. 221, whether the original Order No. 221 or any part thereof is in any respect unjust or unwise, and whether the said Order No. 221 should be abrogated, changed, or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further Ordered. That the said Interborough Rapid Transit Company be given at least five days' notice of such rehearing by service upon it either personally or by mail of a certified copy of this order, and that at such rehearing said Company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to matters aforesaid.

Further Ordered. That the time of the said Interborough Rapid Transit Company within which to comply with the terms of said Order No. 221 be and the same hereby is extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held February 17th.

The following final order was issued:

## FINAL ORDER No. 337.

March 13, 1908.

This matter coming on upon the report of the rehearing under Order No. 221 had herein on the 17th day of February, 1908, and it appearing that said rehearing was held by and pursuant to an order of this Commission dated February 7, 1908, No. 246, and returnable on the 17th day of February, 1908, and that the said order was duly served upon the Interborough Rapid Transit Company and that the said service was by it duly acknowledged and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on February 17, 1908, before Mr. Commissioner Eustis presiding, Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission and Alfred A. Gardner, Esq., appearing for the Interborough Rapid Transit Company and proof being taken.

Now, after the proceedings upon said rehearing and after consideration of the facts, including those arising since the making of the Order No. 221, the Commission being of the opinion that the original Order No. 221, for the improvement in and addition to the equipment and service of the Interborough Rapid Transit Company should be changed and modified in certain particulars,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

Ordered, That the Order No. 221, issued January 28, 1908, and directed to the improvement in and additions to the equipment and service of the Interborough Rapid Transit Company be and the same is hereby changed and modified to read as follows:

## ORDER No. 221.

This matter coming on upon the report of the hearing had herein on the 20th day of December, 1907, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order of this Commission, No. 145, made December 9, 1907, and returnable on the 20th day of December, 1907, and that the said order was duly served upon the Interborough Rapid Transit Company and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 20th day of December, 1907, and by adjournment duly had on the 26th day of December, 1907, and by adjournment duly had on the 21st day of January, 1908, and that at each of said sessions Mr. Commissioner Eustis presided and proof being taken and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission at each of said sessions and Alfred A. Gardner, Esq., appearing for said Interborough Rapid Transit Company.

Now, the Commission being of the opinion after the proceedings upon the said hearing that the regulations, practices, equipment, appliances and service of the Interborough Rapid Transit Company in respect to the transportation of persons in the First District have been and are in certain particulars unreasonable, improper and inadequate and in the judgment of the Commission certain changes, improvements and additions thereto being such as ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public or in order to secure adequate service and facilities for the transportation of passengers and it being the judgment of the Commission that the changes, additions and improvements in regulations, equipment, appliances and service of the said company as below set forth are such as are just, reasonable and proper and ought reasonably to be made to promote the security and convenience of the public.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

Ordered, as follows: That the Interborough Rapid Transit Company increase its said service upon its Third avenue elevated line in the particulars and in the manner hereinafter stated and at the times hereinafter set forth, except on Saturday afternoons, Sundays and holidays, to wit:

## SOUTHBOUND SERVICE.

So that said company shall operate at least ninety-four (94) trains of seven (7) cars each, southbound, past Thirty-fourth street station, between the hours of 7 A. M. and 9 A. M.

## NORTHBOUND SERVICE.

1. So that said company shall operate at least fifteen (15) trains of seven (7) cars each north bound past Forty-second street station, between 4:30 P. M. and 5:00 P. M., of which at least ten (10) trains of seven (7) cars each shall be Bronx Park trains.

2. So that said company shall operate at least eighty-eight (88) trains of seven (7) cars each, northbound past Forty-second street station, between 5:00 P. M. and 7:00 P. M., of which at least sixty-seven (67) trains of seven (7) cars each shall be operated to or north of Tremont avenue station.

And it is further Ordered, that this order take effect on or before the 18th day of March, 1908, and shall remain in force until modified by the further order of this Commission, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to anything herein prescribed or in respect of anything covered by the order for hearing herein.

*And it is further Ordered*, That before the 18th day of March, 1908, the said Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Orders 509, 617, 630, 699 and 814 relate both to the proceedings had concerning service on the Third Avenue Elevated and to those concerning service on the Sixth Avenue Elevated. They are published but once and as a part of the latter proceeding. See series of orders next following, also the opinion of Commissioners Eustis and Maltbie.

**Interborough Rapid Transit Company.—Service on the Sixth avenue elevated.**

Final Order No. 266.

Opinion of Commissioners Eustis and Maltbie.

Extension Order No. 617.

Order No. 569.

Extension Order No. 630.

Extension Order No. 699.

Extension Order No. 814.

Case No. 266, Order modifying final order.

In the Matter  
of the

Hearing on the Motion of the Commission on the Question of Improvements in and Additions to the Service and Equipment of the INTERBOROUGH RAPID TRANSIT COMPANY, in the particulars hereinbelow mentioned.

Sixth Avenue Elevated — Under Order for Hearing  
No. 150, made December 11, 1907.

FINAL ORDER No. 266.  
February 18, 1908.

This matter coming on upon the report of the hearing had herein on the 23d day of December, 1907, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order of this Commission No. 150, made December 11, 1907, and returnable on the 23d day of December, 1907, and that the said order was duly served upon the Interborough Rapid Transit Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 23d day of December, 1907, and by adjournment duly had on the 7th day of January, 1908, and by adjournment duly had on the 25th day of January, 1908, and by adjournment duly had on the 4th day of February, 1908, and at each of said sessions Mr. Commissioner Eustis, presiding, and proof being taken, and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission at each of said sessions, and Alfred A. Gardner, Esq., and Alfred E. Mudge, Esq., appearing for the said Interborough Rapid Transit Company;

Now, it being made to appear after the proceedings upon the said hearing that at or about the time of the issuing of said order of December 11, 1907, the said Interborough Rapid Transit Company added three six-car trains and four seven-car trains to its southbound service on its Sixth avenue line from Harlem, and added four seven-car trains to the northbound service on its Sixth avenue line to Harlem, and it appearing that as a result of such increase, the service of the Interborough Rapid Transit Company, in the transportation of persons on its Sixth avenue line in the First District, has been and is, at the points and at the times set forth, as follows:

PASSING FIFTIETH STREET — SOUTHBOUND.

7:00 to 7:30 A. M.

9 seven-car trains from Harlem,  
6 five-car trains from 58th street.

8:00 to 8:30 A. M.

11 seven-car trains from Harlem,  
6 five-car trains from 58th street.

7:30 to 8:00 A. M.

11 seven-car trains from Harlem,  
3 six-car trains from Harlem,  
4 five-car trains from 58th street.

8:30 to 9:00 A. M.

10 seven-car trains from Harlem,  
5 five-car trains from 58th street.

## PASSING FIFTIETH STREET — NORTHBOUND.

<b>4 :30 to 5:00 P. M.</b>	<b>6:00 to 6:30 P. M.</b>
8 seven-car trains to Harlem, 6 five-car trains to 58th street.	14 seven-car trains to Harlem, 5 five-car trains to 58th street.
<b>5 :00 to 5:30 P. M.</b>	<b>6:30 to 7:00 P. M.</b>
11 seven-car trains to Harlem, 4 five-car trains to 58th street.	12 seven-car trains to Harlem, 5 five-car trains to 58th street, 4 one-car trains from 50th street to 58th street.
<b>5 :30 to 6:00 P. M.</b>	
13 seven-car trains to Harlem, 6 five-car trains to 58th street.	

**And it further appearing that it is just, reasonable and proper that said Interborough Rapid Transit Company should maintain said service on its Sixth avenue line as thus increased and supplemented, and that said increase of service is necessary reasonably to accommodate passenger traffic transported by said company or offered for transportation to it at the times hereinbefore specified,**

**Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is Ordered, That said Interborough Rapid Transit Company operate its trains on its said Sixth avenue line with not fewer trains and not fewer cars on the routes and at the times hereinbefore specified in the schedule of its service as increased and supplemented.**

**And it is further ordered, That this order shall take effect immediately and remain in force until modified by the further order of this Commission, without prejudice to the right of the Commission to issue any further order or orders for hearing upon any of the matters relating to this order.**

**And it is further ordered, That within five days after the service of this order the said Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.**

\* [The falling off in travel on the elevated lines in Manhattan justifies a suspension of the orders for fixed service on these lines.]

## OPINION OF COMMISSION.

(Adopted June 9, 1908.)

## COMMISSIONERS EUSTIS AND MALTBY:

Your committee to whom was referred the application of the Interborough Rapid Transit Company, dated May 21, 1908, requesting modification of certain orders relating to the service on elevated roads on account of the large falling off in travel, beg to submit the following report:

We have examined the officers of the Interborough Rapid Transit Company and statements made by them since this application was received, and also had inspection made by our own inspectors, and from this investigation we find that the application is made in good faith, and that there has been a very large falling off in the travel since midwinter, when the orders were made.

The application refers to two orders: One, No. 266, made in February for service on the Sixth avenue line, requiring at least a certain number of trains to run between each half hour during the rush hours morning and night. The inspection made shows that quite a number of those trains that are still running under this order are carrying very few passengers, especially is this so in regard to the Fifty-eighth street service. The other order complained of is Order No. 337, made March 13, 1908, for service on the Third avenue line. This order provides for a minimum number of trains between 7:00 and 9:00 in the morning, and between 5:00 and 7:00 in the evening, and the examination shows that many of those trains have a large number of vacant seats.

The committee have discussed with the manager of the railroad company the advisability of substituting a more elastic order, while the manager of the railroad desires a chance to rearrange the number of trains to fit the present traveling situation. While the committee are not willing to vacate these orders, they would recommend that they be suspended for twenty days in order to give the manager an opportunity to rearrange the trains according to his idea and also to enable us to inspect the rearrangement and prepare a suitable elastic order that will enable the service to be suited to the travel during the summer months on the lines of providing a seat for every passenger during certain limited intervals of the day.

\* See footnote, page 9.

excepting the short rush hours, and then that there shall be at least a full service, all the lines are capable of supplying, and we therefore submit the following resolution:

Thereupon the following order was issued:

ORDER No. 569.

June 9, 1908.

*Resolved*, That Order No. 266, made on February 18, 1908, relating to the service of the Interborough Rapid Transit Company on its Sixth avenue elevated line, and Order No. 337, made and entered March 13, 1908, relating to the service of the Interborough Rapid Transit Company on its Third avenue elevated line, be, and the same hereby are, suspended for twenty days from date.

Upon applications of the company the following extension orders were issued:

EXTENSION ORDER No. 617.

June 29, 1908.

An order, No. 569, having been made on or about the 9th day of June, 1908, suspending for twenty days from that date, Order No. 266, made and entered on February 18, 1908, relating to the service of the Interborough Rapid Transit Company on the Sixth avenue elevated line, and Order No. 337, made and entered on March 13, 1908, relating to the service of the Interborough Rapid Transit Company on its Third avenue elevated line, and as the time of such suspension expires on June 29, 1908,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of said Suspension Order No. 569 be, and the same hereby is, extended to and including July 9, 1908.

EXTENSION ORDER No. 630.

July 10, 1908.

An order, No. 569, having been made on or about the 9th day of June, 1908, suspending for twenty days from that date Order No. 266, made and entered on February 18, 1908, relating to the service of the Interborough Rapid Transit Company on the Sixth avenue elevated line, and Order No. 337, made and entered on March 13, 1908, relating to the service of the Interborough Rapid Transit Company on its Third avenue elevated line, which time expired on the 29th day of June, 1908; and a further order, No. 617, having been entered on the 29th day of June, 1908; extending the suspension of the aforesaid orders Nos. 266 and 337 to and including July 9, 1908; and it appearing from investigations made by the Transit Department that there are still likely to be some changes made in the service during July, and August,

*It is therefore moved, seconded and ordered*, That the time of the said Suspension Order No. 569, which was further extended by Order No. 617, be, and the same hereby is, further extended to and including September 1, 1908.

EXTENSION ORDER No. 690.

August 28, 1908.

An order, No. 569, having been made on or about the 9th day of June, 1908, suspending for twenty days from that date Order No. 266, made and entered on February 18, 1908, relating to the service of the Interborough Rapid Transit Company on the Sixth avenue elevated line, and Order No. 337, made and entered on March 13, 1908, relating to the service of the Interborough Rapid Transit Company on its Third avenue elevated line, which time expired on the 29th day of June, 1908; and a further order, No. 617, having been entered on the 29th day of June, 1908, extending the suspension of the aforesaid orders Nos. 266 and 337 to and including July 9, 1908; and a further order, No. 630, having been entered on the 10th day of July, 1908, extending the suspension of the aforesaid orders Nos. 266 and 337 to and including the 1st day of September, 1908; and the Interborough Rapid Transit Company have applied in writing, under date of August 26th, for a still further suspension of the above orders, Nos. 266 and 337 for a period of sixty days,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the said Suspension Order No. 569, further extended by orders Nos. 617 and 630 be, and the same hereby is, further extended to and including October 31, 1908.

EXTENSION ORDER No. 814.

October 30, 1908.

An order, No. 569, having been made on or about the 9th day of June, 1908, suspending for twenty days from that date Order No. 266, made and entered on February 18, 1908, relating to the service of the Interborough Rapid Transit Com-

# ORDERS OF THE COMMISSION ISSUED IN 1908. 447

pany on the Sixth avenue elevated line, and Order No. 837, made and entered on March 13, 1908, relating to the service of the Interborough Rapid Transit Company on its Third avenue elevated line, which time expired on the 29th day of June, 1908, and a further order, No. 617, having been entered on the 29th day of June, 1908, extending the suspension of the aforesaid orders Nos. 266 and 337 to and including July 9, 1908; and a further order, No. 630, having been entered on the 10th day of July, 1908, extending the suspension of the aforesaid orders Nos. 266 and 337 to and including the 1st day of September, 1908; and a further order, No. 699, having been entered on the 28th day of August, 1908, extending the suspension of the aforesaid orders Nos. 266 and 337 to and including October 31, 1908; and the Interborough Rapid Transit Company having applied in writing on October 29, 1908, for a still further suspension of the above Orders Nos. 266 and 337.

Now, on motion made and duly seconded, it is

**Ordered**, That the time of the said Suspension Order No. 569, further extended by Orders Nos. 617, 630 and 699, be and the same hereby is, further extended to and including November 15, 1908.

## ORDER MODIFYING FINAL ORDER IN CASE 266.

December 11, 1908.

A final order having been made and filed herein on the 18th day of February, 1908, being Order Number 266 of this Commission, and said order having been duly served on the Interborough Rapid Transit Company, and said company having notified this Commission that it accepted said order and would obey the same, and thereafter said company having applied to the Commission for a modification of said order:

Now, the Commission, after an examination into the premises and a consideration of all the facts, being of the opinion that it is just, reasonable and proper that said order should be modified in the manner following, and that there is sufficient reason for such modification,

Therefore, on motion duly made and seconded, it is

**Ordered**, That Order Number 266 issued February 18, 1908, and directed to the improvement in and addition to the equipment and service of the Interborough Rapid Transit Company, be and the same hereby is changed and modified to read as follows:

### ORDER No. 266.

This matter coming on upon the report of the hearing had herein on the 23d day of December, 1907, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order of this Commission, Number 150, made December 11, 1907, and returnable on the 23d day of December, 1907, and that the said order was duly served upon the Interborough Rapid Transit Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 23d day of December, 1907, and by adjournment duly had on the 7th day of January, 1908, and by adjournment duly had on the 25th day of January, 1908, and by adjournment duly had on the 4th day of February, 1908, and at each of said sessions Mr. Commissioner Eustis presiding, and proof being taken, and Grosvenor H. Backus, Esq., assistant counsel for the Commission, attending at each of said sessions, and Alfred A. Gardner, Esq., and Alfred E. Mudge, Esq., appearing for said Interborough Rapid Transit Company.

Now, it being made to appear after the proceedings upon the said hearing that at or about the time of the issuing of said order of December 11, 1907, the said Interborough Rapid Transit Company added three six-car trains and four seven-car trains to its southbound service on its Sixth avenue line from Harlem, and added four seven-car trains to the northbound service on its Sixth avenue line to Harlem; and it appearing that as a result of such increase the Harlem service of the Interborough Rapid Transit Company in the transportation of persons on its Sixth avenue line in the First District has been and is at the points and at the times set forth as follows:

#### PASSING FIFTIETH STREET, SOUTHBOUND.

7:00 A. M. to 7:30 A. M., 9 seven-car trains from Harlem;  
7:30 A. M. to 8:00 A. M., 11 seven-car trains from Harlem;  
8:00 A. M. to 8:30 A. M., 11 seven-car trains from Harlem;  
8:30 A. M. to 9:00 A. M., 10 seven-car trains from Harlem;

#### PASSING FIFTIETH STREET, NORTHBBOUND.

4:30 P. M. to 5:00 P. M., 9 seven-car trains to Harlem;  
5:00 P. M. to 5:30 P. M., 11 seven-car trains to Harlem;  
5:30 P. M. to 6:00 P. M., 13 seven-car trains to Harlem;  
6:00 P. M. to 6:30 P. M., 14 seven-car trains to Harlem;  
6:30 P. M. to 7:00 P. M., 12 seven-car trains to Harlem;

and it appearing further that it is just, reasonable and proper that said Interborough Rapid Transit Company should maintain said service on its Sixth avenue line as thus increased and supplemented, and that said increase of service is necessary reasonably to accommodate passenger traffic transported by said company or offered for transportation to it at the times hereinbefore specified;

Therefore, on motion duly made and seconded, it is  
*Ordered*, That said Interborough Rapid Transit Company operate its trains on its said Sixth avenue line with not fewer trains and not fewer cars on the route and at the times hereinbefore specified in the schedule of its service as increased and supplemented, and it is further

*Ordered*, That this order shall take effect immediately and remain in force until modified by the further order of this Commission, without prejudice to the right of the Commission to issue any further order or orders for hearing upon any of the matters relating to this order. And it is further

*Ordered*, That within five days after the service upon it of this order the said Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

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**Long Island Railroad Company.—Service on East Thirty-fourth street ferry to Long Island City.**

Complaint Order No. 265.  
 Hearing Order No. 416.  
 Opinion of Commissioner Bassett.  
 Dismissal Order No. 535.

**COMPLAINT OF JOSEPH CAVANAGH**

*against*

**LONG ISLAND RAILROAD COMPANY.**

Complaint Order No. 265 (see form, note 1), issued February 18th.

Several complaints, beside that of Mr. Cavanagh, touching upon practically the same matters, having been received, the following hearing order on motion of the commission was issued:

In the Matter of the Hearing on the motion of the Commission on the question of improvements in and additions to the service of the LONG ISLAND RAILROAD COMPANY in respect to the ferry operated by said company between Long Island City and Thirty-fourth Street, Manhattan.	ORDER FOR HEARING No. 416. April 17, 1908.
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*It is hereby Ordered* that a hearing be had on the 29th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 152 Nassau street, in the borough of Manhattan, city and State of New York, to inquire whether the regulations, practices and service of the Long Island Railroad Company in respect to the transportation of persons in the First District on the ferry operated by said company between Long Island City and Thirty-fourth street, Manhattan, are unreasonable, improper or inadequate, and whether the said Long Island Railroad Company runs boats enough or with sufficient frequency, or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by said Long Island Railroad Company on said line, or offered for transportation to it, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation to it, and is and will be just, reasonable and proper to direct that the service of said Long Island Railroad Company upon said line be increased, supplemented and changed in the following manner, that is to say:

1. From Long Island City to Thirty-fourth street, Manhattan, between 7:00 A. M. and 8:00 A. M., by an increase of four trips, or from eight trips to twelve trips.
2. From Long Island City to Thirty-fourth street, Manhattan, between 8:00 A. M. and 9:00 A. M., by an increase of four trips, or from eight trips to twelve trips.
3. From Long Island City to Thirty-fourth street, Manhattan, between 9:00 A. M. and 9:10 A. M., by an increase of one trip, or from two trips to three trips.
4. From Thirty-fourth street, Manhattan, to Long Island City, between 5:00 P. M. and 6:00 P. M., by an increase of four trips, or from eight trips to twelve trips.

5. From Thirty-fourth street, Manhattan, to Long Island City, between 6:00 P. M. and 7:00 P. M., by an increase of four trips, or from eight trips to twelve trips.

6. By making such other and further changes in the schedule and manner of operating boats on said line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

It is further ordered, That the said Long Island Railroad Company be given at least five days' notice of said hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held April 29th and May 20th.

OPINION OF COMMISSION.

(Adopted May 26, 1908.)

COMMISSIONER BASSETT:—

During the months of January and February, 1908, many complaints were received by the Commission alleging that the service on the Thirty-fourth Street Ferry line was inadequate and that the service had been crippled by the withdrawal from said line of two new boats, the "Hempstead" and the "Babylon." Upon the complaint of Joseph Cavanagh, a complaint order was made and served on or about February 18, 1908. The answer filed on February 27, 1908, alleged that the service was adequate and that the "Hempstead" and the "Babylon" had been withdrawn for repairs and because of the silting up of the slips which made the operation of these boats difficult, these boats being larger than the others.

Before any hearing order was issued observations were made by inspectors of the Commission. These observations were made about the middle of March and showed the service to be adequate except during the morning and evening rush hours. The observations showed also that the "Hempstead" and "Babylon" were not in use. As a result of these observations the inspectors recommended an increase of service during the morning and evening rush hours but no increase of service at other hours of the day.

A hearing order was thereafter served based upon the recommendations of the inspectors and hearings were had thereon on April 29, 1908, and May 20, 1908.

Upon these hearings it appeared that after the institution of proceedings by the Commission the company had restored the "Babylon" and "Hempstead" to service, and had complied with the suggestions of the hearing order as to service during the evening rush hours, and that the restoration of the "Hempstead" and "Babylon" to the service had on account of the greater capacity of these boats effected a substantial compliance with the suggestions of the order as to service during the morning rush hours. It further appeared that the opening of the tunnel under the East river had diminished the patronage of the ferry very materially, and that in all probability this patronage would be diminished still further by the completion of other tunnels under this river and by the deflection of traffic by trolley lines on the south side of Long Island.

In view of these facts, I am of the opinion that the complaint should be dismissed.

Thereupon the following dismissal order was issued:

DISMISSAL ORDER No. 535.

May 26, 1908.

This matter coming on upon the report of the hearing had herein on April 29, 1908, and on May 20, 1908, and it appearing that said hearing was held pursuant to Order No. 416 of this Commission, dated April 17, 1908, and returnable on the 29th day of April, 1908, issued on motion of the Commission for the purpose of bringing on for hearing certain matters suggested by the complaint of Joseph Cavanagh against said Long Island Railroad Company, and the answer of said railroad company thereto, regarding alleged inadequacy of service on the ferry operated by said company between Long Island City and Thirty-fourth street, Manhattan, and it appearing that said order was duly served upon said Long Island Railroad Company and that said service was by it duly acknowledged, and

## 450 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

It appearing that said hearing was had by and before the Commission on the matters embraced in the said complaint and answer and in said order specified on the 29th day of April, 1908, and on the 20th day of May, 1908, before Mr. Commissioner Bassett presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission, and Joseph F. Keaney, Esq., attorney for said railroad company, and proof having been taken upon said hearing, and it having been made to appear after the proceedings on said hearing that the service now afforded by said Long Island Railroad Company to the complainant and others upon said Thirty-fourth street ferry line is not unreasonable or inadequate, said service having been increased by said company since the institution of proceedings by this Commission so as to substantially comply with the suggested requirements mentioned in said Order No. 416, and that it would not be reasonable under the circumstances to order any further increase of said service,

Now, therefore, on motion of George S. Colemen, Esq., counsel to the Commission, it is

*Ordered*, That the said complaint be and the same hereby is dismissed and that this order be filed in the office of the Commission. And it is

*Further Ordered*, That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by the said complaint and answer and order for hearing or the proceedings thereon.

### Long Island Railroad Company.—Inadequate service on North Side division between midnight and 4 A. M.

COMPLAINT OF BYRON R. NEWTON

against

LONG ISLAND RAILROAD COMPANY.

Complaint Order No. 679 (see form, note 1), issued August 18th.

### Long Island Railroad Company.—Train service between East New York and Long Island City.

Rehearing Order No. 193.  
Final Order No. 429.  
Rehearing Order No. 680  
Final Order No. 712.

In the Matter  
of the

Hearing on the motion of the Commission as to the regulations, practices, equipment and service of the LONG ISLAND RAILROAD COMPANY in the respects hereinafter mentioned.

ORDER FOR REHEARING  
No. 193.  
January 8, 1908.

Matter of rehearing on matters contained in Order No. 181.

An order having been made and filed on the 31st day of December, 1907, No. 181, under and pursuant to an order for hearing made November 20, 1907, No. 100, said Order No. 181 having thereafter been duly served upon the Long Island Railroad Company, the same to take effect immediately, and the said Long Island Railroad Company having been required by said order to notify this Commission upon or before the 6th day of January, 1908, whether the terms of said Order No. 181 are accepted and will be obeyed, and the said Long Island Railroad Company having, on the 6th day of January, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in the said Order No. 181, and sufficient reason for said rehearing being made to appear.

*Ordered*, That said request for rehearing be granted and that said rehearing upon matters contained in said Order No. 181, entered and filed on the 31st day of December, 1907, be held on the 21st day of January, 1908, at 2:30 o'clock in the

# ORDERS OF THE COMMISSION ISSUED IN 1908.

451

afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 184 Nassau street, borough of Manhattan, city and State of New York, to determine whether said Order No. 181 or any part thereof is in any respect unjust or unwarranted,

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said Long Island Railroad Company be given at least (10) days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further Ordered*, That the time of the said Long Island Railroad Company to comply with the terms of said Order No. 181 be and the same hereby is extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held January 21st.

The following final order was issued:

## FINAL ORDER No. 429.

April 21, 1908.

This matter coming on upon the report of the rehearing under Order No. 181, and it appearing that said rehearing was held by and pursuant to an order of this Commission, No. 193, dated the 8th day of January, 1908, and returnable on the 21st day of January, 1908, and that the said Order No. 193 was duly served upon the Long Island Railroad Company and that the said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on the 21st day of January, 1908, Mr. Commissioner McCarroll presiding, and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission, and Joseph F. Keany, Esq., appearing for said Long Island Railroad Company, and proof being taken;

Now, after the proceedings upon said rehearing, and after consideration of the facts including those arising since the making of said Order No. 181, and the Commission being of the opinion that the original Order No. 181 for the improvement in and additions to the service of the Long Island Railroad Company should be changed and modified in certain particulars;

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered*, That Order No. 181 issued on the 31st day of December, 1907, and directed to the improvement in and additions to the service of the Long Island Railroad Company be and the same is hereby changed and modified to read as follows:

## ORDER No. 181.

This matter coming on upon the report of the hearing had herein on the 2d day of December, 1907, and it appearing that the said hearing was held by and pursuant to an order of this Commission No. 100 made November 20, 1907, and returnable on the 2d day of December, 1907, and that the said order was duly served upon the Long Island Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 2d day of December, 1907, and by adjournment duly had on the 16th day of December, 1907, and at each of said sessions, Mr. Commissioner McCarroll presiding, and proof being taken, and Grosvenor H. Backus, Esq., Assistant Counsel, appearing for the Commission at each of said sessions, and Joseph F. Keany, Esq., appearing for the said Long Island Railroad Company;

Now, the commission being of the opinion that after the proceedings upon the said hearing the service of the Long Island Railroad Company in the transportation of persons in the First District on its lines operating between Long Island City and East New York has been and is unreasonable and inadequate in that said company does not operate enough trains between Long Island City and East New York reasonably to accommodate the traffic offered for transportation to said company, and the Commission being of the opinion after said proceedings that it is reasonably necessary for the accommodation and transportation of passengers offering themselves for transportation, and is and will be just, reasonable and proper that the said service of the Long Island Railroad Company on said line between Long Island City and East New York should be supplemented and changed in the particulars hereinafter set forth, upon the lines, at the points and at the times so hereinafter set forth;

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered*, That the service of the Long Island Railroad Company on its line between Long Island City and East New York be supplemented and changed as follows:

That in addition to the service now operated by said railroad company over its Manhattan Beach Division, said company operate a train from East New York to Long Island City which shall leave East New York between 7 A. M. and 7.10 A. M., daily except Sundays and that said train shall stop regularly at the Bush-

452 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

wick avenue, Cypress avenue and Myrtle avenue stations on said Manhattan Beach Division of said Long Island Railroad Company.

*And it is further Ordered*, That said Long Island Railroad Company, pending the adoption of its summer schedule for the season of 1908, shall cause the train scheduled to leave Long Island City at 5:35 P. M. to stop regularly at the Bushwick avenue, Cypress avenue and Myrtle avenue stations on said Manhattan Beach Division of said Long Island Railroad Company; and that upon and after the adoption of said summer schedule of 1908 said company shall operate a train leaving Long Island City between 6:00 P. M. and 6:15 P. M., daily except Sundays, which shall stop at said Bushwick avenue, Cypress avenue and Myrtle avenue stations on the Manhattan Beach Division of said company.

*And it is further Ordered*, That this order shall take effect on the 28th day of May, 1908, and shall remain in effect until modified by the further order of this Commission.

*And it is further Ordered*, That on or before the 30th day of April, 1908, the Long Island Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

REHEARING ORDER No. 680.

AUGUST 18, 1908.

An order, No. 429, having been made and filed herein on or about the 21st day of April, 1908, on and pursuant to an order for rehearing No. 193 made on the 8th day of January, 1908, resettling the terms of Final Order No. 181 made and filed herein on the 31st day of December, 1907, and thereafter said Order No. 429 having been duly served upon the Long Island Railroad Company, the same to take effect on May 28th, 1908, and the said Long Island Railroad Company having, on August 14th, 1908, applied in writing to this Commission for a rehearing in respect to the matter contained in said Order No. 429, and sufficient reason for said rehearing having been made to appear;

*Ordered*, That said request for rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 429, entered and filed on April 21st, 1908, be held on the 26th day of August, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, Borough of Manhattan, City and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of Order No. 429, whether the original Order No. 429, or any part thereof, is in any respect unjust or unwise, and whether the said Order No. 429 should be abrogated, changed or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said Order, and to determine the time of taking effect of the Order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said Long Island Railroad Company be given at least six days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held August 26th, 28th, and September 3d.

The following final order was issued:

FINAL ORDER No. 712, VACATING ORDER No. 429.

SEPTEMBER 4, 1908.

This matter coming on upon the report of the rehearing had herein on the 26th day of August, 1908, on the 28th day of August, 1908, and on the 3d day of September, 1908, and it appearing that said rehearing was had pursuant to Order for Rehearing No. 680 of this Commission, made the 18th day of August, 1908, and that said order was duly served upon said Long Island Railroad Company, and such service was by it duly acknowledged, and it appearing that said order for rehearing was issued by the Commission upon due application of said railroad company after service on said company of Final Order No. 429 of this Commission, made and filed herein on or about the 21st day of April, 1908, ordering and directing the said company to operate additional trains on its Manhattan Beach Division between East New York and Long Island City, and it appearing that said rehearing was had by and before the Commission on the matters embraced in said order for rehearing on the 26th day of August, 1908, and the various adjournments thereof, before Mr. Commissioner McCarron and Mr. Commissioner Bassett, Grovernor H. Backus, Esq., assistant counsel, attending, and Joseph F. Keaney, Esq., appearing for the defendant, and proof having been taken upon said rehearing, and it having been made to appear after the proceedings on said rehearing that the Long Island Railroad Company has operated the additional trains on its Manhattan Beach Division, as required by said Order No. 429, and that the trains on said additional

trains is not sufficient to justify their operation, and that it would therefore be proper to direct that said Final Order No. 420 be abrogated.

Now, On motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered:*

1. That said Order No. 420 of this Commission directing the operation of said additional trains between East New York and Long Island City, as aforesaid, be and the same hereby is abrogated, vacated and set aside.

2. That this order shall take effect immediately, and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. That this order shall be without prejudice to the right of the Commission to hold such other and further hearing or hearings and to issue such other and further order or orders in the matter of said service as may to the Commission seem just and reasonable.

4. That this order shall be filed in the office of the Commission, and a certified copy of said order be served upon the Long Island Railroad Company.

**Nassau Electric Railroad Company.— Inadequate service on holidays and Sundays — Fulton street line at Utica avenue.**

**COMPLAINT OF ANDREW A. KIRKPATRICK**

*against*

**NASSAU ELECTRIC RAILROAD COMPANY.**

Complaint Order No. 312 (see form, note 1), issued March 6th.

**Nassau Electric Railroad Company.— Increase of service on Seventh avenue line.**

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and equipment of the NASSAU ELECTRIC RAILROAD COMPANY, in respect to the Seventh avenue line and in respect to the Flat-bush-Seventh avenue line.

**ORDER FOR HEARING**  
No. 380.  
March 20, 1908.

*It is hereby Ordered,* That a hearing be had on the 9th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, equipment, appliances and service of the Nassau Electric Railroad Company, in respect to transportation of persons in the First District, are unjust, unreasonable, improper and inadequate, and whether the said company runs cars enough or with sufficient frequency or possesses or operates motive power enough reasonably to accommodate the passenger traffic transported by it or offered for transportation to it and if such be found not to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation and is and will be just, reasonable, proper and adequate to direct that the service of the said Nassau Electric Railroad Company on its Seventh avenue line and on its Flatbush-Seventh avenue line be increased and supplemented at the points and times and in the particulars following, that is to say:

**As to Seventh avenue line:**

- (a) *Westbound*, leaving Seventh avenue and Twentieth street.
- 1. Between 6:15 and 6:45 A.M., by an increase of one car in the New York service, making a total of 8 cars to New York.
- 2. Between 6:45 and 7:15 A.M., by an increase of 2 cars in the New York service, making a total of 10 cars to New York and one car to South Ferry.

3. Between 7:15 and 7:45 A.M., by an increase of 3 cars in New York service and one car in the South Ferry service, making a total of 10 cars to New York and 2 cars to South Ferry.

4. Between 7:45 and 8:15 A.M., by an increase of 4 cars in the New York service and 2 cars in the South Ferry service, making a total of 10 cars to New York and 4 cars to South Ferry.

5. Between 8:15 and 8:45 A.M., by an increase of 3 cars to the New York service and 2 cars to the South Ferry service, making a total service of 10 cars to New York and 4 cars to South Ferry.

6. Between 8:45 and 9:15 A.M., by an increase of 3 cars to New York service, making a total of 9 cars to New York.

7. Between 9:15 and 9:45 A.M., by an increase of 3 cars to the New York service, making a total service of 8 cars to New York.

8. Between 9:45 and 10:15 A.M., by an increase of one car to New York service, making a total service of 4 cars to New York.

(b) *Eastbound*, leaving New York to Seventh avenue and Twentieth street:

9. Between 3:00 and 3:30 P.M., by an increase of one car or by an increase from 5 to 6 cars.

10. Between 3:30 and 4:00 P.M., by an increase of one car or by an increase from 5 to 6 cars.

11. Between 4:00 and 4:30 P.M., by an increase of one car or by an increase from 8 to 9 cars.

12. Between 4:30 and 5:00 P.M., by an increase of 2 cars or by an increase from 8 to 10 cars.

13. Between 5:00 to 5:30 P.M., by an increase of 2 cars or by an increase from 8 to 10 cars.

14. Between 5:30 and 6:00 P.M., by an increase of 2 cars or by an increase from 8 to 10 cars.

15. Between 6:00 and 6:30 P.M., no increase; ten cars were operated.

16. Between 6:30 and 10:00 P.M., by an increase of one car or by an increase from 3 to 4 cars.

17. Between 10:00 and 10:30 P.M., by an increase of one car or by an increase from 3 to 4 cars.

18. Between 10:30 and 11:00 P.M., by an increase of one car or by an increase from 4 to 5 cars.

19. Between 11:00 and 11:30 P.M., by an increase of one car or by an increase from 2 to 3 cars.

(c) *Eastbound*, leaving South Ferry to Seventh avenue and Twentieth street:

20. Between 5:45 and 5:15 P.M., by an increase of 2 cars or by an increase from 2 to 4 cars.

21. Between 5:15 and 5:45 P.M., by an increase of 4 cars or by an increase from 3 to 7 cars.

22. Between 5:45 and 6:15 P.M., by an increase of 4 cars or by an increase from 3 to 7 cars.

23. Between 6:15 and 6:45 P.M., by an increase of 3 cars or by an increase from 2 to 5 cars.

As to Flatbush-Seventh avenue line:

(d) *Westbound*, leaving Seventh avenue and Twentieth street.

1. Between 6:45 and 7:15 A.M., by an increase of one car in the Fulton ferry service, making a total service of 7 cars, i. e., 3 to Fulton ferry and 4 to City Hall.

2. Between 7:15 and 7:45 A.M., by an increase of one car in the Fulton ferry service, and 2 cars in the City Hall service, making a total service of 9 cars, i. e., 3 to Fulton ferry and 6 to City Hall.

3. Between 7:45 and 8:15 A.M., by an increase of one car in the Fulton ferry service and 3 cars in the City Hall service, making a total service of 12 cars, i. e., 4 to Fulton ferry and 8 to City Hall.

4. Between 8:15 and 8:45 A.M., by an increase of 2 cars in the Fulton ferry service and 4 cars in the City Hall service, making a total service of 12 cars, i. e., 4 to Fulton ferry and 8 to City Hall.

5. Between 8:45 and 9:15 A.M., by an increase of 2 cars in the City Hall service, making a total service of 10 cars, i. e., 4 to Fulton ferry and 6 to City Hall.

6. Between 9:15 and 9:45 A.M., by an increase of one car in the Fulton ferry service and 2 cars in the City Hall service, making a total service of 8 cars, i. e., 4 to Fulton ferry and 4 to City Hall.

7. Between 9:45 and 10:15 A.M., by an increase of 4 cars in the City Hall service, making a total service of 9 cars, i. e., 4 to Fulton ferry and 5 to City Hall.

8. Between 10:15 and 10:45 A.M., by an increase of 3 cars in the City Hall service, making a total service of 7 cars, i. e., 4 cars to Fulton ferry and 3 cars to City Hall.

9. Between 10:45 and 11:15 A.M., by an increase of 3 cars in the City Hall service, making a total of 7 cars, i. e., 4 to Fulton ferry and 3 to City Hall.

10. Between 11:15 and 11:45 A.M., by an increase of one car in the City Hall service, making a total service of 5 cars, i. e., 4 to Fulton ferry and one to City Hall.

11. Between 12:45 and 1:15 P.M., by an increase of 2 cars in the City Hall service, making a total service of 6 cars, i. e., 4 to Fulton ferry and 2 to City Hall.

12. Between 1:15 and 1:45 P.M., by an increase of 3 cars in the City Hall service, making a total service of 8 cars, i. e., 5 to Fulton ferry and 3 to City Hall.

18. Between 1:45 and 2:15 P.M., by an increase of 2 cars in the City Hall service, making a total service of 7 cars, i. e., 5 to Fulton ferry and 2 to City Hall.  
 14. Between 2:15 and 2:45 P.M., by an increase of 3 cars in the City Hall service, making a total service of 8 cars, i. e., 5 to Fulton ferry and 3 to City Hall.  
 15. Between 2:45 and 3:15 P.M., by an increase of 3 cars in the City Hall service, making a total service of 8 cars, i. e., 5 to Fulton ferry and 3 to City Hall.  
 16. Between 7:15 and 7:45 P.M., by an increase of 5 cars in the City Hall service, making a total service of 14 cars, i. e., 5 to Fulton ferry and 9 to City Hall.  
 17. Between 7:45 and 8:15 P.M., by an increase of 3 cars in the City Hall service, making a total service of 6 cars, i. e., 3 cars to Fulton ferry and 3 cars to City Hall.

- (e) *Eastbound*, leaving City Hall to Seventh avenue and Twentieth street.  
 18. Between 10:45 and 11:15 A.M., by an increase of one car, or by an increase from 4 to 5 cars.  
 19. Between 11:15 and 11:45 A.M., by an increase of 2 cars, or by an increase from 4 to 6 cars.  
 20. Between 11:45 A.M. and 12:15 P.M., by an increase of 2 cars or by an increase from 5 to 7 cars.  
 21. Between 12:15 and 12:45 P.M., by an increase of one car, or by an increase from 6 to 7 cars.  
 22. Between 12:45 and 1:15 P.M., by an increase of one car, or by an increase from 6 to 7 cars.  
 23. Between 1:15 and 1:45 P.M., by an increase of one car, or by an increase from 5 to 6 cars.  
 24. Between 1:45 and 2:15 P.M., by an increase of one car, or by an increase from 5 to 6 cars.  
 25. Between 2:15 and 2:45 P.M., by an increase of 2 cars, or by an increase from 5 to 7 cars.  
 26. Between 2:45 and 3:15 P.M., by an increase of 3 cars, or by an increase from 4 to 7 cars.  
 27. Between 3:15 and 3:45 P.M., by an increase of 3 cars, or by an increase from 6 to 9 cars.  
 28. Between 3:45 and 4:15 P.M., by an increase of 2 cars, or by an increase from 8 to 10 cars.  
 29. Between 4:15 and 4:45 P.M., by an increase of 3 cars, or by an increase from 8 to 11 cars.  
 30. Between 4:45 and 5:15 P.M., by an increase of 4 cars, or by an increase from 8 to 12 cars.  
 31. Between 5:15 and 5:45 P.M., by an increase of 3 cars, or by an increase from 9 to 12 cars.  
 32. Between 5:45 and 6:15 P.M., by no increase; 12 cars were operated.  
 33. Between 6:15 and 6:45 P.M., by an increase of 2 cars, or by an increase from 10 to 12 cars.  
 34. Between 6:45 and 7:15 P.M., by an increase of 2 cars, or by an increase from 9 to 11 cars.  
 35. Between 9:15 and 9:45 P.M., by an increase of one car, or by an increase from 3 to 4 cars.  
 36. Between 9:45 and 10:15 P.M., by an increase of one car, or by an increase from 3 to 4 cars.  
 37. Between 10:15 and 10:45 P.M., by an increase of 4 cars, or by an increase from 4 to 8 cars.  
 38. Between 10:45 and 11:15 P.M., by an increase of 4 cars, or by an increase from 4 to 8 cars.  
 39. Between 11:15 and 11:45 P.M., by an increase of 4 cars, or by an increase from 4 to 8 cars.

And if any such changes, improvements or additions be found to be such as ought to be made, as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said Nassau Electric Railroad Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing said Company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held April 22d and 27th.

The testimony at the hearings showed that new schedules were soon to be put in effect which it was thought would provide sufficient accommodation. Some improvement was discernible in the service but a preliminary investigation report on December 31st showed there was still considerable overcrowding. The full report of the general transit inspection was not submitted at the close of the year.

Nassau Electric Railroad Company.—Service on St. Johns Place line.

Hearing Order No. 764.  
Statement by Commissioner Maltbie.  
Final Order No. 832.  
Extension Order No. 847.  
Extension Order Case No. 832.  
Extension Order Case No. 832.

In the Matter  
of the

Hearing on motion of the Commission on the question of regulations, practices, equipment, appliances and service of the NASSAU ELECTRIC RAILROAD COMPANY, in respect to the St. Johns Place Line.

HEARING ORDER No. 764.  
October 6, 1908.

*It is hereby Ordered,* That a hearing be had on the 15th day of October, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances and service of the Nassau Electric Railroad Company in respect to the transportation of persons and property in the First District upon its St. Johns place line are unreasonable, unsafe, improper or inadequate as hereinafter set forth, and whether changes, additions and improvements thereto ought reasonably to be made in the manner below set forth in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of persons and property, and to determine whether a change, addition, and improvement in the regulations, practices, equipment, appliances and service of said company, as hereinafter set forth, are such as will be just, reasonable, safe, adequate and proper and ought reasonably to be made:

1. Whether said Nassau Electric Railroad Company should be directed to change the system of transferring at present employed at Borough Hall, Brooklyn, whereby passengers coming from Park Row, Manhattan, desiring to transfer to lines which are not operated across the bridge are required to obtain transfer tickets from one of the company's agents stationed at Borough Hall; the same system being employed with respect to traffic in the opposite direction;

2. Whether the said Nassau Electric Railroad Company should be directed to operate cars on the St. Johns place line through to Manhattan;

3. Whether said Nassau Electric Railroad Company should be directed to operate cars on the St. Johns place line at suitable intervals throughout the night.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid then to determine the details of such changes, improvements and additions, and to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered,* That the said Nassau Electric Railroad Company be given at least 8 days' notice of such hearing by service upon it, either personally or by mail, or a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held October 15th.

EXTRACT FROM MINUTES NOVEMBER 11, 1908.

Commissioner McCarroll presented a proposed final order as to the service on the St. Johns place line of the Nassau Electric Railroad Company, and it was moved and duly seconded that the order be adopted.

Ayes — Commissioners Willcox, McCarroll, Bassett, Eustis.

Nays — Commissioner Maltbie.

Carried.

In voting "Nay" on the adoption of this order, Commissioner Maltbie made the following statement: "In voting 'No' upon this order, I wish it to be understood that I do not oppose the issuance of an order directing an increased service upon this line, but in my opinion the residents of the area served by this road are entitled to a better service than is called for by the order, especially in view of the fact that more stringent rules have been adopted upon other lines."

The following final order was issued:

## FINAL ORDER No. 832.

November 11, 1908.

This matter coming on upon the report of the hearing had herein on the 15th day of October, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made on October 6, 1908, and returnable on October 15, 1908, and that said order was duly served upon the Nassau Electric Railroad Company, and that said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on October 15, 1908, Mr. Commissioner McCarroll presiding, Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission, and Arthur N. Dutton, Esq., appearing for the Nassau Electric Railroad Company.

Now, it being made to appear after the proceedings upon said hearing that the regulations and service of the Nassau Electric Railroad Company in respect to the transportation of persons in the First District have been and are in certain respects unreasonable, improper and inadequate, in that the said company does not run cars enough or with sufficient frequency or on a reasonable time schedule, reasonably to accommodate the passenger traffic transported by or offered for transportation to it, and it appearing that changes and improvements in the regulations and service of the said company, as duly set forth, are such as are just, reasonable, adequate and proper, and ought reasonably to be made in order to promote the convenience of the public,

Now, on motion made and duly seconded, it is

*Ordered*, That the service of the Nassau Electric Railroad Company on its St. Johns place line be supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sundays, over every point of the St. Johns place line between Buffalo avenue and Borough Hall, Brooklyn, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every thirty (30) minute period of the day or night a number of seats at least equal to the number of passengers at that point, the number of cars passing any point to be, however, not less than six (6) per hour in each direction, except that between the hours of midnight and 1:30 A. M., the number of cars shall never be less than four (4) per hour in each direction, and also between the hours of 1:30 A. M. and 6:30 A. M. the number of cars shall never be less than two (2) per hour in each direction, or

(b) A minimum number of fifteen (15) cars in each direction in each thirty (30) minute period in which the provisions of subdivision (a) above are not complied with.

2. By operating daily, except Sundays, from the Atlantic avenue subway station in Brooklyn between 5 and 7 P. M. over the St. Johns place line to Buffalo avenue at least three (3) cars during each thirty (30) minute period in which the minimum number of fifteen (15) cars are operated, as called for in subdivision 1-(b), but a sufficient number of seats, as specified in subdivision 1-(a), are not being provided at the Atlantic avenue subway station, and it is further

*Ordered*, That this order shall take effect on November 20, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearing and acting thereon by the Commission, in respect to anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years. And it is further

*Ordered*, That before November 18, 1908, the Nassau Electric Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon applications of the company the following extension orders were issued:

## EXTENSION ORDER No. 847.

November 20, 1908.

An order, No. 832, having been made herein on or about the 11th day of November, 1908, ordering and directing the Nassau Electric Railroad Company to make certain changes in the service on its St. Johns place line on or before the 30th day of November, 1908, and directing said company to inform the Public Service Commission for the First District before November 18, 1908, whether the terms of said order are accepted and will be obeyed, and said company having applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Nassau Electric Railroad Company shall make the changes above mentioned be, and the same hereby is, extended to and including November 30, 1908. It is further

*Ordered*, That the time within which the Nassau Electric Railroad Company shall make answer to said Order No. 832 be, and the same hereby is, extended to and including November 28, 1908.

458 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

CASE No. 832, EXTENSION ORDER.

December 15, 1908.

An order, No. 832, having been made herein on or about the 11th day of November, 1908, ordering and directing the Nassau Electric Railroad Company to make certain changes in the service on its St. Johns place line on or before the 30th day of November, 1908, and directing said company to inform the Public Service Commission for the First District before November 18, 1908, whether the terms of said order are accepted and will be obeyed, and the time within which the said company shall make the changes above mentioned having been extended to and including November 30, 1908, and the time of the said company within which to make answer to said order having been extended to and including November 28, 1908, and said company having applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Nassau Electric Railroad Company shall make the changes above mentioned be, and the same hereby is, extended to and including December 18, 1908. It is further

*Ordered*, That the time within which the Nassau Electric Railroad Company shall make answer to said order be, and the same hereby is, extended to and including December 16, 1908.

CASE No. 832, EXTENSION ORDER.

December 18, 1908.

An order, No. 832, having been made herein on or about the 11th day of November, 1908, ordering and directing the Nassau Railroad Company to make certain changes in the service on its St. Johns place line on or before the 30th day of November, 1908, and directing the said company to inform the Public Service Commission for the First District before November 18, 1908, whether the terms of said order are accepted and will be obeyed, and the time within which said company shall make the changes above mentioned having been extended to and including November 30, 1908, and the time of the said company within which to make answer to said order having been extended to and including November 28, 1908, and the time of said company within which to make said changes having been further extended to and including December 18, 1908, and the time of said company within which to notify the Commission of the acceptance of said order having been further extended to and including December 16, 1908, and said company having applied for a rehearing,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Nassau Electric Railroad Company shall make the changes above mentioned be, and the same hereby is extended to and including January 4, 1909.

*It is further Ordered*, That the time within which the Nassau Electric Railroad Company shall make answer to said order be, and the same hereby is, extended to and including January 2, 1909.

New York and Queens County Railway Company.—Service on  
Calvary cemetery surface line in Queens.

Hearing Order No. 321.  
Final Order No. 500.

In the Matter  
of the

Hearing upon the motion of the Commission on the  
question of improvements in and additions to the  
service of the NEW YORK AND QUEENS  
COUNTY RAILWAY COMPANY.

HEARING ORDER No. 321.  
March 10, 1908.

"Service on Calvary Cemetery surface line, in  
Queens."

*It is hereby Ordered*, That a hearing be had on the 24th day of March, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the New York and Queens County Railway Company, in respect to transportation of persons in the State of New York, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner

below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances and service of the said company, as hereinafter set forth, are such as may be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

(1) That the service west-bound leaving Metropolitan avenue to Long Island Ferry between 6:50 and 7:50 A. M. be increased by two cars, or by an increase from six to eight cars;

(2) That the service east-bound leaving Long Island Ferry to Metropolitan avenue between 5:20 and 6:20 P. M. be increased by two cars, or by an increase from six to eight cars;

(3) That the headway on cars leaving Long Island Ferry to Metropolitan avenue and returning between 7:10 and 11:10 P. M. be diminished from thirty to twenty minutes, or the service be increased by four cars, or the service be increased from nine to thirteen cars;

(4) Leaving the Long Island Ferry to Metropolitan avenue and returning between 1 and 5 A. M., that a car be run every hour connecting with the ferry boats, from Thirty-fourth street, Manhattan, such service representing a total increase of four cars;

(5) That said company provide and display on each car a destination sign, which shall state clearly the destination of the car.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said New York and Queens County Railway Company be given at least ten (10) days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity of presenting evidence and examining and cross examining witnesses as to the matters aforesaid.

Hearings held March 24th and 31st.

The following final order was issued.

FINAL ORDER No. 500.

May 15, 1908.

This matter coming on upon the report of the hearing had herein on the 24th day of March, 1908, and on the 31st day of March, 1908, and it appearing that the said hearing was had pursuant to Order No. 321 of this Commission made on the 10th day of March and returnable on the 24th day of March, 1908, and that said order was duly served on said New York and Queens County Railway Company and such service was by it duly acknowledged, and it appearing that said hearing was had by and before the Commission on the matters specified in said order on the aforesaid dates before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, Van Vechton Veeder, Esq., attorney and Frank L. Fuller, Esq., president of the said railway company, appearing for said New York and Queens County Railway Company, and proof having been taken on said hearing and it having been made to appear after the proceedings on said hearing that the service of said New York and Queens County Railway Company upon its line known as the Calvary Cemetery line between Thirty-fourth street ferry and Metropolitan avenue in the borough of Queens, city and State of New York, in respect to the transportation of persons upon said line are improper and inadequate, and that said New York and Queens County Railway Company does not run cars enough reasonably to accommodate the passenger traffic transported by it or offered for transportation to it, and it having been made to appear after the proceedings on said hearing that in order to secure adequate service and facilities for the transportation of passengers upon its said line it would be just, reasonable and proper to require said Company to increase its service on said line daily except Sunday by operating over said line between Thirty-fourth street ferry and Metropolitan avenue leaving Thirty-fourth street ferry for Metropolitan avenue between the hours of 7:10 P. M. and 11:10 P. M., at least three (3) cars per hour, or one car in each twenty (20) minute interval, instead of two (2) cars per hour, or one car in each thirty (30) minute interval, and that it would be just, reasonable and proper to require said company to operate on said line between Thirty-fourth street ferry and Metropolitan avenue leaving Thirty-fourth street ferry for Metropolitan avenue between the hours of 8:40 A. M. and 4:40 P. M., no cars having a seating capacity of less than thirty-eight (38) passengers, and it having been made to appear after the proceedings on said hearing that ten (10) days would be a reasonable time within which said requirements should be directed to be executed.

## 460 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Now, on motion of George S. Coleman, counsel to the Commission, it is  
*Ordered*,

1. That said New York and Queens County Railway Company be and it hereby is directed and required to increase its service on said Calvary Cemetery line daily except Sunday, by operating over said line between Thirty-fourth street ferry and Metropolitan avenue leaving Thirty-fourth street for Metropolitan avenue between the hours of 7:10 P.M. and 11:00 P.M., at least three (3) cars per hour, or one car in each twenty (20) minute interval, instead of two (2) cars per hour, or one car in each thirty minute interval.

2. That said New York and Queens County Railway Company be and it hereby is directed and required to operate during other hours than those hereinbefore specified not less than the number of cars provided in its schedule of January 11, 1908.

3. *It is further Ordered*, That said New York and Queens County Railway Company be and it hereby is directed and required to operate daily except Sunday on said Calvary Cemetery line between Thirty-fourth street ferry and Metropolitan avenue leaving Thirty-fourth street ferry for Metropolitan avenue between the hours of 8:40 A.M., and 4:40 P.M., no cars having a seating capacity of less than thirty-eight (38) passengers.

4. *It is further Ordered*, That the requirements of this order be complied with by said New York and Queens County Railway Company within ten (10) days after service upon said company of a certified copy of this order.

5. *It is further Ordered*, That this order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

6. *It is further Ordered*, That said New York and Queens County Railway Company notify the Public Service Commission for the First District within five (5) days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

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### New York and Queens County Railway Company.—Service on Jamaica-Flushing line.

Complaint Order No. 267.

Hearing Order No. 559.

Opinion of Commissioner Bassett.

Dismissal Order Case No. 559.

#### COMPLAINT OF E. H. GATES

against

NEW YORK AND QUEENS COUNTY RAILWAY COMPANY.

Complaint Order No. 267 (see form, note 1) issued February 4th.

Hearing Order No. 559 (see form, note 3) issued June 9th.

Hearing held October 15th.

#### OPINION OF COMMISSION.

(Adopted December 1, 1908.)

##### COMMISSIONER BASSETT:—

Hearings were held herein on the complaint of the complainant that the service on the surface line of the defendant between Jamaica and Flushing was irregular and infrequent. This railroad consists of a single line of track with turn-outs for the cars to pass each other. For a large part of the distance the company uses its private right of way. At the time this complaint was made cars were operating with a headway of 15 minutes. The cause of the complaint of the citizens that occurred at that time appears to have been an unusual amount of irregularity resulting from breakdowns of overhead work and poor condition of rolling stock. The report of the Commission's inspectors last spring showed considerable overcrowding. Before the hearing was held, however, this overcrowding was stopped by running more frequent cars in rush hours. The headway now is 10 minutes in rush hours and 15 minutes at other times of the day.

The only remedy for prevention of occasional periods of overcrowding on this line is to make it a two track line. At present, however, the traffic does not seem to be sufficient to warrant the insistence by the Commission for this change. It is probable that a new surface railroad will be constructed between Jamaica and Long

**Island City** by way of Hoffman boulevard and Thompson avenue. When this is done there will probably be a diversion to the new road of part of the traffic that now goes over the Flushing road. The operating company is this winter running better cars on this line than it did last winter and spring and consequently there have been fewer breakdowns.

Inasmuch as the company has improved its service on this line both in the frequency of its cars and the quality of its rolling stock, it does not seem necessary to me that a service order should be imposed at this time. The complaint should therefore be dismissed.

Thereupon the following dismissal order was issued:

E. H. GATES, against <b>NEW YORK AND QUEENS COUNTY RAILWAY COMPANY,</b>	<i>Complainant,</i> Defendant.	CASE 559, <b>DISMISSAL ORDER.</b> December 1, 1908.
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"Insufficient service on Jamaica-Flushing Line."

An order of the Commission, No. 559, having been made herein on the 9th day of June, 1908, directing a hearing on October 15, 1908, in the matter of service on the Jamaica-Flushing line of the New York and Queens County Railway Company, and it appearing from testimony taken at said hearing, on which report was made by Commissioner Bassett, that there has been an improvement in the service rendered on said line, and that a demand for additional service is not at present warranted.

*Ordered*, That said complaint be, and the same hereby is, dismissed.

### New York Central and Hudson River Railroad Company.— Restoration of the Putnam division service.

Order for Answer No. 211.  
 Hearing Order No. 252.  
 Opinion of Commissioner Eustis.  
 Final Order No. 311.  
 Rehearing Order No. 344.  
 Opinion of Commissioner Eustis.  
 Final Order No. 524.

ORDER No. 211.  
 January 17, 1908.

*Resolved*, That the New York Central and Hudson River Railroad Company be required to make answer, giving the reasons for the proposed discontinuance of trains on the Putnam division after midnight.

In the Matter of the <b>Service, Regulation and Practices of the NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.</b>	HEARING ORDER No. 252. February 11, 1908.
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"Restoration of Putnam Division Service."

An order of the Commission, No. 211, having been made herein on the 17th day of January, 1908, requiring the New York Central and Hudson River Railroad Company to give reasons for the proposed discontinuance of trains on the Putnam

Division after midnight, and said company having made answer thereto on the 1<sup>d</sup> day of February, 1908,

*Ordered*, That upon the matters therein a hearing be had on the 20th day of February, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, City and State of New York; that at said hearing the said New York Central and Hudson River Railroad Company show cause why it should not restore the service upon its Putnam Division after midnight, which has been discontinued by taking off trains 103, 105, 106, 107, 108 and 110.

*Further ordered*, That the said New York Central and Hudson River Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinbefore set forth.

Hearing held February 20th.

OPINION OF COMMISSION.

(Adopted March 6, 1908.)

COMMISSIONER EUSTIS:—

On January 17, 1908, order No. 211 of this Commission was issued requiring the New York Central and Hudson River Railroad Company to make answer giving the reasons for the proposed discontinuance of trains on the Putnam Division after midnight. The company made answer thereto on February 3, 1908, stating that the trains discontinued on said division were as follows:

Train No. 103, leaving One Hundred and Fifty-fifth Street Station at 2:00 A. M.

Train No. 105, leaving One Hundred and Fifty-fifth Street Station at 3:00 A. M.

Train No. 107, leaving One Hundred and Fifty-fifth Street Station at 4:00 A. M.

Train No. 106, leaving Yonkers Station at 2:25 A. M.

Train No. 108, leaving Yonkers Station at 8:25 A. M., and

Train No. 110, leaving Yonkers Station at 4:25 A. M.

The company further stated in said answer that "the discontinuance of said trains was ordered by the defendant by reason of the fact that the average number of passengers carried upon such trains was so small during a long period of time prior to their discontinuance that the revenue gained therefrom did not justify the expense incurred in the running of said trains."

Upon the hearing the company's witnesses stated that the only reason for the discontinuance of the trains mentioned was that the revenue gained from the running of said trains did not justify the expense incurred. It appeared, however, from their testimony that since the Putnam Division passed into the hands of the defendant railroad company in or about 1893, this entire division had always been run at a loss, the entire receipts therefrom being far less than the cost of operating the road, so that, if the fact of a road not being a financial success were to excuse the discontinuance of trains, the defendant would be justified in abandoning this division entirely. It does not do this, however, but discontinues a few of its trains, to the great inconvenience of the traveling public and sets up as its reason the fact that these trains do not pay. The evidence shows that a large number of persons are accommodated by these trains, and it would appear reasonable to require that the service thus discontinued be restored. In fact, it appears that after the first order herein was issued and on or about January 30, 1908, the defendant of its own volition restored the train leaving One Hundred and Fifty-fifth street for Yonkers at 4:00 A. M. and returning leaving Yonkers for One Hundred and Fifty-fifth street at 4:25 A. M., and has since continued said train, although the testimony is to the effect that the train mentioned is less profitable to the company than any of the trains that have not been restored, and if it was reasonable to restore the train mentioned which is less profitable to the company than either of the other trains which have been discontinued, then it would not seem unreasonable to require that the other discontinued trains be restored.

It is claimed by the defendant that the patronage of these trains has largely fallen off since the construction of trolleys and subways, which have reduced the income of the company on this division. However, there is nothing to show that if the defendant would meet these changed conditions by running more trains and

charging a rate of fare that would enable them to compete with the trolleys and subways, they would not recover a large amount of their patronage and do business at a profit, instead of (as they say) at a loss, and it is altogether likely that the inauguration of the changes suggested would bring about the result indicated, as a large part of the traveling public would prefer to ride in defendant's cars if the expense were no greater than on the trolleys and subways.

The defendant raises the question of jurisdiction, and claims that jurisdiction of the matter in hand belongs to the Public Service Commission of the Second District, as the line mentioned runs from a point within one district to a point within the other district. Without deciding the question presented, I am of the opinion that under subdivision 3 of section 5 of the Public Service Commissions Law, the Public Service Commission for the First District has clearly jurisdiction and power to make an order in this matter providing for the restoration of said trains between points lying wholly within the First District. That subdivision is as follows:

"The jurisdiction, supervision, powers and duties of the Public Service Commission in the First District shall extend under this act to such portion of the lines of any other railroad (than a street railroad) as lies within that district, and to the person or corporation owning, leasing, operating or controlling the same, so far as concerns the construction, maintenance, equipment, terminal facilities, and local transportation facilities, *and local transportation of persons or property within that district.*"

As all stations on said Putnam Division from One Hundred and Fifty-fifth street, to Van Cortlandt, both inclusive, are within the First District, let an order be drawn directing and requiring the restoration of said trains between said points.

Thereupon the following final order was issued:

**ORDER No. 311.**

March 6, 1908.

This matter coming on upon the report of the hearing had herein on the 20th day of February, 1908, and it appearing that the said hearing was held pursuant to Order No. 252 of this Commission, made February 11, 1908, and returnable on the 20th day of February, 1908, and that said order was duly served upon said New York Central and Hudson River Railroad Company, on the 13th day of February, 1908, said order being an order to show cause why said railroad company should not restore the service upon its Putnam Division after midnight which had been discontinued by taking off trains Nos. 103, 105, 106, 107, 108 and 110, train No. 103 leaving One Hundred and Fifty-fifth street for Yonkers at 2:00 A. M.; train No. 105, leaving One Hundred and Fifty-fifth street for Yonkers at 3:00 A. M.; train No. 107, leaving One Hundred and Fifty-fifth street for Yonkers at 4:00 A. M.; train No. 106, leaving Yonkers for One Hundred and Fifty-fifth street at 2:25 A. M.; train No. 108, leaving Yonkers for One Hundred and Fifty-fifth street at 3:25 A. M.; and train No. 110, leaving Yonkers for One Hundred and Fifty-fifth street at 4:25 A. M.; and it appearing that said hearing was held by and before the Commission on the matters embraced in said order on the 20th day of February, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., appearing for the Commission, A. S. Lyman, Esq., and E. H. Boles, Esq., appearing for said railroad company, and proof having been taken upon said hearing that said service was discontinued on January 19, 1908, and has not been restored except that the train leaving One Hundred and Fifty-fifth street for Yonkers at 4:00 A. M., and returning, leaving Yonkers for One Hundred and Fifty-fifth street at 4:25 A. M., was restored on or about January 30, 1908, and it being made to appear after the proceedings on said hearing that the regulations, practices and service of said railroad company in respect to the transportation of persons upon said line, in the city and State of New York, are unjust, unreasonable, improper and inadequate on account of discontinuance of said trains leaving One Hundred and Fifty-fifth street at 2:00 A. M., and at 3:00 A. M., and returning to One Hundred and Fifty-fifth street as aforesaid, and that it would be just, reasonable and proper to require that the said trains be restored within the corporate limits of the city of New York on account of the matters proved upon the hearing herein.

And it appearing in the judgment of the Commission, after the said hearing, that the said New York Central and Hudson River Railroad Company does not run trains enough upon its Putnam Division in the city and State of New York, between the stations of One Hundred and Fifty-fifth street and Van Cortlandt, reasonably to accommodate the passenger traffic transported by or offered for transportation to it upon said lines and between said stations and intermediate stations upon said line; and it appearing in the judgment of the Commission, after said hearing, that an increase of the number of said company's trains upon said division between said stations in the city and State of New York is reasonably necessary

to accommodate and transport the passenger traffic transported by, or offered for transportation to it, within the city and State of New York, and that it is just, reasonable and proper for the accommodation and transportation of such passenger traffic that the number of said company's trains upon said division should be increased within the corporate limits of the city of New York by the restoration of the trains so discontinued and not yet restored as aforesaid.

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered,*

(1) That said New York Central & Hudson River Railroad Company be and it hereby is directed and required to increase its passenger service on its Putnam Division in the city and State of New York by the addition daily of one (1) passenger train leaving One Hundred and Fifty-fifth street at 2 A. M., and stopping at High Bridge, Morris Heights, University Heights, Kingsbridge and Van Cortlandt, and returning so as to reach One Hundred and Fifty-fifth street before 3 A. M., and stopping at all of said stations on its return, and by the addition of one (1) passenger train leaving One Hundred and Fifty-fifth street at 3 A. M., and stopping at all of said stations above mentioned, and returning to One Hundred and Fifty-fifth street stopping at all of said stations and reaching One Hundred and Fifty-fifth street not later than 4 A. M.

(2) It is further ordered, That the said service be put into effect by said New York Central & Hudson River Railroad Company not later than the 17th day of March, 1908, and continued each day thereafter.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

(3) It is further ordered, That said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District within five days after the service of this order upon it, whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing was issued:

#### REHEARING ORDER No. 344.

March 17, 1908.

An order, No. 311, having been made and filed herein on or about the 6th day of March, 1908, under and pursuant to an order for a hearing, No. 252, made on or about the eleventh day of February, 1908, and thereafter duly served upon the New York Central and Hudson River Railroad Company, ordering and directing the said company to put into effect the service therein mentioned not later than the 17th day of March, 1908, and in and by said Order No. 311 the said New York Central and Hudson River Railroad Company having been required to notify this commission within five days after service upon it of the said order whether the terms of said Order No. 311 were accepted and will be obeyed, and the said New York Central and Hudson River Railroad Company having, on the 14th day of March, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in said Order No. 311, and sufficient reason for said rehearing being made to appear, it is

*Ordered,* That said request for rehearing be, and the same hereby is, granted, and that said rehearing upon the matters contained in said order, No. 311, entered and filed on the 6th day of March, 1908, be held on the 26th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine whether said Order No. 311 or any part thereof is in any respect unjust or unwarranted.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said New York Central and Hudson River Railroad Company be given at least five (5) days notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered,* That the time of the said New York Central and Hudson River Railroad Company to comply with the terms of Order No. 311 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearings held March 26th and May 5th.

#### OPINION OF COMMISSION.

(Adopted May 26, 1908.)

COMMISSIONER EUSTIS:—

"Early in January of this year this commission received notice that the New York Central and Hudson River Railroad Company had discontinued the service of certain trains that had formerly run on its Putnam branch from 155th street to Yonkers for a period of about fourteen years, to wit, the trains leaving 155th street at 2, 3 and 4 A. M., and returning at 2:30, 3:30 and 4:30. Believing that it was not in the interests of the traveling public that a service which had

existed for such a long time should be summarily reduced, a hearing was ordered. It appeared upon the hearing from the evidence of the witnesses produced by the railroad company that these trains had been discontinued on the 19th of January for the reason that they did not pay and for the further reason that very few passengers patronized these trains. And it further appeared that not only were these trains unprofitable, but that all of their service upon this division was unprofitable.

"They gave as the earnings for this division for the first four months of 1900, \$49,000, and for the first four months of 1907, \$32,000, showing that in one year their earnings had depreciated one-third; and that the cost of running the road for the same period of time was \$33,800, which did not include any allowance for interest on investment, but simply the operating expenses. They also admitted on the hearing that notwithstanding these trains had been taken off on the 19th of January, on the 30th of January they restored the 4 o'clock train because some one had requested them to do so. Their evidence showed that in November, 1907, the 2 o'clock train for a period of three weeks averaged twenty-seven passengers; the 3 o'clock train averaged fifteen passengers; and the 4 o'clock train averaged only seven; also that the return trains from Yonkers at 2:30 and 3:30 A. M. carried a few passengers, while the 4:30 A. M. train was, as the witness described it, 'between hay and grass, nobody riding.' It also appeared that the number of passengers using this line during the last two years was less than fifty per cent. of what it was ten years ago, and they gave as the reason the opening of the New York subway to Kingsbridge. The counsel for the company stated that they would have to go out of business were they dependent upon the returns from this road to maintain it, and it was only because it was owned by a concern that was operating more paying roads that it was able to keep going.

"In view of the fact that this corporation having seen fit to restore of their own motion a train at 4 o'clock in the morning, when the travel was far lighter than at 2 and 3 o'clock, an order was made by this Commission on March 6, 1908, requiring the 2 A. M. and 3 A. M. trains restored from 155th street to the city line. The railroad company feeling aggrieved applied for a rehearing, which was granted, and the rehearing was held on March 26th, on which rehearing the company was represented by its former attorney, Mr. Lyman, and also by its counsel, Mr. Harris. They claimed upon this hearing that it was a great hardship and injustice for this road to be compelled to operate these trains on account of their very little use, and they produced a statement upon this hearing showing that the total expense of the road for 1907 was \$510,208.61, and their total receipts only \$386,332.34, leaving a deficiency of \$123,874.27; and they claim that they should be relieved of the obligation and expense of maintaining these trains for the further reason that the territory adjacent to the line of this road was supplied by an all night service by various trolley lines that were rendering a service varying from ten to thirty minutes headway during the early morning hours.

"The vice-president of the road, Mr. V. P. Smith, testified that these trains were taken off because they did not pay, and also the people had left their line and gone to other lines, and further that the territory between 155th street and Yonkers was one more suitable for trolley or electric service than for a steam railroad.

"The fare charged upon this road within the city limits varies from five to fifteen cents—five cents for the shortest rides, ten cents from 155th street to Kingsbridge, and fifteen cents to Van Cortlandt Park. When the vice-president of this railroad was asked why his company did not take measures to build up the travel by meeting competition and transforming their line to an electric line, and giving a frequent service, the question was answered by Mr. Harris, the counsel, in the following manner:

'I can answer that question, that is the first part of it. There was a time several years ago when I think this road would have been electrified to Yonkers if it had not been for the opposition of the people in the city of Yonkers and their failure to give us the franchise and consents—not for

the building of any new tracks, but the right for duct improvements and things of that kind that were absolutely required for the electrification of the road. The city officials declined to give us the necessary rights. I know that at that time the matter of electrifying this Putnam Division to Yonkers under certain conditions was expected to be done, but the situation shaped itself in such a way that the project was abandoned.'

"And when Mr. Harris was asked whether he was willing to tell the Commission whether there was any intention at the present time of electrifying the Putnam Division, he said:

'There is not at the present time. Just let me follow that. We are not doing any work of that kind in view of the present conditions of the market, you might say.'

"When this line was first constructed, over thirty years ago, it was intended to be a continuation of the west side elevated lines and to furnish service to the patrons of that line living in the west side of the borough of the Bronx, all along the line to the city of Yonkers, and the travel gradually increased, and prior to the time of the road being taken over by the New York Central and Hudson River Railroad Company it was rendering a good service and giving satisfaction, and for some years after the New York Central took over this line their service was satisfactory, but for the past few years they seem to have changed their tactics and in place of endeavoring to meet competition in rates as well as good service they have preferred to do anything and everything that would naturally tend to drive the patrons away to other lines of travel, and the fact that the road does not pay at the present time with the large population that travels in that direction every day is the result of their own lack of proper management.

"The section traversed by this line is entitled to far better service than this company has been giving to it during the past two years. In fact the district would warrant a service equal to that which the Brooklyn trains give to Coney Island. Van Cortlandt Park is a great resort nearly all the year around on account of the many kinds of amusements and enjoyments the people have there, and the vice-president, Mr. Smith, was right when he said that this was a territory that required electric service, and if this company were to electrify the road and put on a frequent service, day and night, with a reasonable fare, they would have no complaint of lack of patrons.

"The time is not far distant when the west side subway will be unable to give proper accommodations to the travel that is gradually coming to it from Yonkers and all along on the west side of the Bronx, then this road should be made to serve the purpose for which it was built, if they do not do it voluntarily, and that is to serve as a continuation of the west side elevated lines with a frequent service, as the elevated lines are far less crowded than the subway. And, as this road extends into the jurisdiction of the Second District, this is a subject that should be taken under consideration at an early day by both Commissions.

"However, in view of the fact that this hearing was taken up by the Commission, and none of the patrons of the road have entered any complaint about the discontinuance of the trains mentioned, I would recommend, for the present at least, that Order No. 311 requiring the restoration of the trains leaving at 2 A. M., and 3 A. M. be vacated."

Thereupon the following final order was issued:

**FINAL ORDER No. 524, VACATING ORDER No. 311.**

May 26, 1908.

This matter coming on upon the report of the rehearing had herein on the 26th day of March, 1908, and on the 5th day of May, 1908, and it appearing that said rehearing was had pursuant to order for rehearing No. 344 of this Commission made March 16, 1908, and returnable on the 26th day of March, 1908, and that said order was duly served upon said New York Central and Hudson River Railroad Company and such service was by it duly acknowledged; and it appearing that said order for rehearing was issued by the Commission upon due

application of said railroad company after service on said company of final order No. 311 of this Commission made and filed herein on or about the 6th day of March, 1908, ordering and directing said company to restore on the Putnam Division of said company's road certain service which had been discontinued and to restore said service not later than the 17th day of March, 1908, and it appearing that said rehearing was had by and before the Commission on the matters embraced in said order for rehearing on the 26th day of March, 1908, before Mr. Commissioner Eustis presiding, and on the 5th day of May, 1908, before the full Commission, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and Albert H. Harris, Esq., and Alexander S. Lyman, Esq., attorneys, appearing for said railroad company; and proof having been taken upon said rehearing, and argument having been had thereon before the full Commission; and said rehearing and the matters embraced therein having been submitted to the Commission on the 5th day of May, 1908; and it having been made to appear after the proceedings on said rehearing that the original hearing herein was instituted by the Commission upon its own motion and not upon complaint; that no complaints on account of the discontinuance of said trains had then been received or have since been received; that none of the patrons of said Putnam Division had appeared in any way upon said rehearing or upon the original hearing herein; that a large part of the patronage of the said Putnam Division has been deflected to the subway, and there seems to be no immediate necessity for the restoration of the service mentioned; and that under the circumstances said original order No. 311, directing the restoration of said service, may have been unwarranted; and that it would therefore be proper to direct that said final Order No. 311 be abrogated.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is  
*Ordered*, 1. That said original Order No. 311 of this Commission directing the restoration of service as aforesaid be and the same hereby is abrogated, vacated and set aside.

2. That this order shall take effect immediately and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. That this order shall be without prejudice to the right of the Commission to hold such other and further hearing or hearings and to issue such other and further order or orders in the matter of said service as may to the Commission seem just and reasonable.

4. That this order shall be filed in the office of the Commission and a certified copy thereof be served upon said railroad company.

### New York Central and Hudson River Railroad Company.—

Additional local trains on the Harlem division.

Hearing Order No. 314.  
Final Order No. 538.  
Final Order No. 567.

#### COMPLAINT OF THE CIVIC LEAGUE OF THE BRONX

*against*

NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

Hearing Order No. 314 (see form, note 3) issued March 6th.

Hearings held March 10th, 27th, April 2d, 9th and May 5th.

The following final order was issued:

<p>CIVIC LEAGUE OF THE BRONX,  <i>Complainant</i>,  <i>against</i>  THE NEW YORK CENTRAL AND HUDSON RIVER  RAILROAD COMPANY, <i>Defendant</i>.</p>	<p>ORDER No. 538.  May 29, 1908.</p>
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Additional Local Trains on the Harlem Division.

This matter coming on upon the report of the Civic League of the Bronx, bearing date August, 1907, and the answer thereto of the New York Central and Hudson River Railroad Company, verified October 10, 1907, and the report of the hearing had herein on March 19, 1908, March 27, 1908, April 2, 1908, April 9, 1908, and May 5, 1908, and it appearing that said hearing was held by and pursuant

## 468 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

to an order of the Commission made and entered on the 6th day of March, 1908, and returnable on the 19th day of March, 1908, and that said order for hearing was duly served upon the New York Central and Hudson River Railroad Company, and that said hearing was held by and before said Commissioners on the matters in said complaint, said answer and said order specified on the above set forth, Mr. Commissioner Eustis presiding at the sessions of March 19th, March 27th, April 2d and April 9th, and Mr. Commissioner Eustis, Mr. Commissioner Bassett, Mr. Commissioner Maitbie and Mr. Commissioner McCarroll presiding at the session of May 5, 1908, Arthur DuBois, Esq., Assistant Counsel, appearing for the Commission, and Alexander S. Lyman, Esq., General Attorney for the New York Central and Hudson River Railroad Company, appearing for the New York Central and Hudson River Railroad Company at all of said sessions.

Now it being made to appear by the complaint, answer and proceedings on said hearing that the regulations, practices, equipment, appliances and service of the New York Central and Hudson River Railroad Company in respect to transportation of persons within the First District are unreasonable improper and inadequate, and it being the judgment of the Commission that the New York Central and Hudson River Railroad Company does not run trains enough reasonably to accommodate the passenger traffic transported by or offered for transportation to it, and does not run its trains with sufficient frequency, and it appearing that the changes in regulations and service as hereinafter specified are just, reasonable and proper and ought reasonably to be made in order to promote the security and convenience of the public and in order to secure adequate service or facilities for transportation of passengers, and that said changes and additions ought reasonably to be made within the time hereinafter specified.

Therefore, On motion of George S. Coleman, Counsel to the Commission, it is

*Ordered*, 1. That the New York Central and Hudson River Railroad Company operate on its Harlem Division daily except Sundays and holidays at least the following trains:

### NORTHBOUND.

At least to the northern boundary of The City of New York, scheduled to leave Grand Central Station within five minutes of the following hours:

- 12:59 A. M., making all stops within the City of New York, except at 183d street.
- 5:24 A. M., making all stops within the City of New York, except at 183d street.
- 7:02 A. M., making all stops within the City of New York.
- 8:24 A. M., making all stops within the City of New York.
- 9:35 A. M., making all stops within the City of New York, except Morrisania, Claremont Park and 183d street.
- 10:50 A. M., making all stops within the City of New York.
- 12:05 P. M., making all stops within the City of New York.
- 12:27 P. M., Saturdays only, stops Melrose, Tremont, Botanical Gardens and all stations north within the City of New York.
- 1:36 P. M., making all stops within the City of New York.
- 2:36 P. M., making all stops within the City of New York, except Morrisania, Claremont Park and 183d street.
- 3:40 P. M., making all stops within the City of New York.
- 4:20 P. M., stops Tremont, Botanical Gardens and all stations north within the City of New York.
- 5:11 P. M., making all stops within the City of New York.
- 5:38 P. M., making all stops within the City of New York.
- 6:08 P. M., making all stops within the City of New York.
- 6:20 P. M., making all stops within the City of New York, except 183d street.
- 6:37 P. M., making all stops within the City of New York, except 183d street.
- 6:58 P. M., stops at Botanical Gardens and all stations north, within the City of New York.
- 7:30 P. M., making all stops within the City of New York, except 183d street.
- 8:35 P. M., making all stops within the City of New York, except 183d street.
- 9:35 P. M., making all stops within the City of New York, except 183d street.
- 10:35 P. M., making all stops within the City of New York, except 183d street.
- 11:35 P. M., making all stops within the City of New York, except 183d street.

### SOUTHBOUND.

Scheduled to arrive at Grand Central Station within five minutes of the following hours:

- 6:34 A. M., making all stops within the City of New York, except at 183d street.
- 7:04 A. M., making all stops within the City of New York.
- 7:27 A. M., making all stops to Tremont, except 183d street.
- 7:58 A. M., making all stops to Botanical Gardens.
- 8:10 A. M., making all stops within the City of New York.
- 8:13 A. M., making all stops to Woodlawn.
- 8:43 A. M., making all stops within the City of New York.
- 9:23 A. M., making all stops within the City of New York.
- 10:04 A. M., making all stops within the City of New York, except at 183d street.
- 11:32 A. M., making all stops within the City of New York, except at 183d street.
- 1:03 P. M., making all stops within the City of New York, except at 183d street.
- 1:52 P. M., making all stops within the City of New York, except Morrisania, Claremont Park and 183d street.
- 3:04 P. M., making all stops within the City of New York, except at 183d street.
- 4:03 P. M., making all stops within the City of New York, except at 183d street.
- 5:05 P. M., making all stops within the City of New York.
- 6:04 P. M., making all stops within the City of New York.

6:31 P. M., making all stops to Tremont, except Fordham and 183d street.  
 7:15 P. M., making all stops within the City of New York, except 183d street.  
 7:42 P. M., making all stops to Botanical Gardens.  
 8:04 P. M., making all stops within the City of New York, except 183d street.  
 9:04 P. M., making all stops within the City of New York, except 183d street.  
 10:34 P. M., making all stops within the City of New York, except 183d street.  
 11:29 P. M., making all stops to Botanical Gardens, in addition Tremont and Melrose.  
 12:31 P. M., making all stops within the City of New York, except 183d street.

And it is further ordered, That this order shall take effect when the new schedule goes into effect but not later than June 20, 1908, and shall continue in full force and effect for a period of one year from and after the date of its taking effect unless sooner modified or changed by order of the Commission. And it is further

*Ordered*, That within five days the said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

ORDER No. 567, modifying ORDER No. 538.

June 9, 1908.

The New York Central and Hudson River Railroad Company having applied in writing on June 6, 1908, for a change and modification in Order No. 538, heretofore made on May 29, 1908, and the Commission being of the opinion that the original Order No. 538, for the improvement in and addition to the service of the New York Central and Hudson River Railroad Company, in respect to local service on the Harlem Division, should be changed and modified in certain particulars,

*Ordered*, That Order No. 538, made May 29, 1908, be and the same hereby is changed and modified to read as follows:

ORDER No. 538.

This matter coming on upon the report of the Civic League of the Bronx, bearing date August, 1907, and the answer thereto of the New York Central and Hudson River Railroad Company, verified October 10, 1907, and the report of the hearing had herein on March 19, 1908, March 27, 1908, April 2, 1908, April 9, 1908, and May 5, 1908, and it appearing that said hearing was held by and pursuant to an order of the Commission made and entered on the 8th day of March, 1908, and returnable on the 19th day of March, 1908, and that said order for hearing was duly served upon the New York Central and Hudson River Railroad Company, and that said hearing was held by and before said Commissioners on the matters in said complaint, said answer and said order specified on the days above set forth, Mr. Commissioner Eustis, presiding at the sessions of March 19th, March 27, April 2d and April 9th, and Mr. Commissioner Eustis, Mr. Commissioner Bassett, Mr. Commissioner Maitble and Mr. Commissioner McCarroll presiding at the session of May 5, 1908, W. W. Niles, Esq., appearing for the complainant; Arthur DuBois, Esq., assistant counsel, appearing for the Commission, and Alexander S. Lyman, Esq., general attorney for the New York Central and Hudson River Railroad Company appearing for the New York Central and Hudson River Railroad Company at all of said sessions.

Now it being made to appear by the complaint, answer and proceedings on said hearing that the regulations, practices, equipment, appliances and service of the New York Central and Hudson River Railroad Company in respect to transportation of persons within the First District are unreasonable, improper and inadequate, and it being the judgment of the Commission that the New York Central and Hudson River Railroad Company does not run trains enough reasonably to accommodate the passenger traffic transported by or offered for transportation to it, and does not run its trains with sufficient frequency, and it appearing that the changes in regulations and service as hereinafter specified are just, reasonable and proper and ought reasonably to be made in order to promote the security and convenience of the public and in order to secure adequate service or facilities for transportation of passengers, and that said changes and additions ought reasonably to be made within the time hereinafter specified,

Therefore, on motion of George S. Coleman, Counsel to the Commission, it is

*Ordered*, 1. That the New York Central and Hudson River Railroad Company operate on its Harlem Division daily except Sundays and holidays at least the following trains:

NORTHBOUND.

12:59 A. M., making all stops in the City of New York except 183d street.  
 6:02 A. M., making all stops in the City of New York except 183d street.  
 7:10 A. M., making all stops in the City of New York.  
 8:24 A. M., making all stops in the City of New York.  
 9:35 A. M., making all stops in the City of New York except Morrisania, Claremont Park and 183d street.  
 10:50 A. M., making all stops in the city of New York.  
 12:16 P. M., making all stops in the City of New York.  
 1:36 P. M., making all stops in the City of New York.  
 2:36 P. M., making all stops in the City of New York, except Morrisania, Claremont Park and 183d street.  
 3:40 P. M., making all stops in the City of New York.

470 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

4:15 P. M., Stopping at Tremont, Botanical Gardens, and stations northerly in the City of New York.  
5:11 P. M., making all stops in the City of New York.  
5:38 P. M., making all stops in the City of New York.  
6:08 P. M., making all stops in the City of New York.  
6:20 P. M., making all the stops in the City of New York, except 183d street.  
6:44 P. M., making all the stops in the City of New York, except 183d street.  
7:30 P. M., making all the stops in the City of New York, except 183d street.  
8:35 P. M., making all the stops in the City of New York, except 183d street.  
9:35 P. M., making all the stops in the City of New York, except 183d street.  
10:35 P. M., making all the stops in the City of New York, except 183d street.  
11:35 P. M., making all the stops in the City of New York, except 183d street.

SOUTHBOUND.

Scheduled to arrive at the Grand Central Station within five minutes of the following times:

6:34 A. M., making all stops in the City of New York, except 183d street.  
7:04 A. M., making all stops in the City of New York.  
7:27 A. M., making all stops in the City of New York to Tremont, except 183d street.  
7:58 A. M., making all stops in the City of New York to Botanical Garden.  
8:08 A. M., making all stops in the City of New York.  
8:11 A. M., making all stops in the City of New York to Woodlawn.  
8:43 A. M., making all stops in the City of New York.  
9:23 A. M., making all stops in the City of New York.  
10:04 A. M., making all stops in the City of New York, except 183d street.  
11:32 A. M., making all stops in the City of New York, except 183d street.  
1:08 P. M., making all stops in the City of New York, except 183d street.  
1:52 P. M., making all stops in the City of New York, except Morrisania, Claremont Park and 183d street.  
3:04 P. M., making all stops in the City of New York, except 183d street.  
4:03 P. M., making all stops in the City of New York, except 183d street.  
5:05 P. M., making all stops in the City of New York.  
6:04 P. M., making all stops in the City of New York.  
6:17 P. M., making all stops in the City of New York to Tremont, except Fordham and 183d street.  
7:15 P. M., making all stops in the City of New York, except 183d street.  
7:52 P. M., making all stops in the City of New York, except 183d street.  
9:04 P. M., making all stops in the City of New York, except 183d street.  
10:04 P. M., making all stops in the City of New York, except 183d street.  
11:05 P. M., making stops at Wakefield, Woodlawn, Williamsbridge, Botanical Garden, Tremont and Melrose.  
12:31 A. M., making all stops in the City of New York, except 183d street.

And it is further ordered, That this order shall take effect when the new schedule is adopted, but not later than June 21, 1908, and shall continue in force and effect for a period of one year from and after the date of its taking effect unless sooner modified or changed by order of the Commission, and it is further

Ordered, That within five days the said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

New York City Railway Company.—Service on Twenty-third street crosstown line.

Hearing Order No. 390.  
Opinion of Commissioner Maltbie  
Final Order No. 422.

In the Matter  
of the

Hearing on the Motion of the Commission on the Question of Improvements in and Additions to the Service and Equipment of the NEW YORK CITY RAILWAY COMPANY and of Adrian H. Joline and Douglas Robinson, as Receivers of said Company.

ORDER FOR HEARING  
No. 390.  
March 31, 1908.

Twenty-third Street Crosstown Line.

It is hereby ordered. That a hearing be had on the 10th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regula-

tions, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to transportation of persons in the First District, on the Twenty-third Street Crosstown line, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By discontinuing the operation of all cars operated between the westerly end of Twenty-third street and the Grand Central Station via Twenty-third street and Fourth avenue.

2. By changing the method of collecting fares on the Twenty-third Street Crosstown line cars on Twenty-third street so as to avoid delays in the car movement at or near the east and west terminal of the Twenty-third street line.

3. By operating daily, including Sunday, over every point on the Twenty-third Street Crosstown line either

(a) a sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a ten per cent. excess of seats over passengers at that point; the number of cars passing any point to be, however, never less than six per hour in each direction; or

(b) a minimum number of Twenty-five cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

4. By making such other and further changes in the schedule and manner of operating cars on the Twenty-third Street Crosstown line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers, of the New York City Railway Company, be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held April 10th.

\* [A standard of service on a street surface railroad should be elastic. In order to provide seats for all passengers it is necessary to run cars with a greater seating capacity than the number of passengers. Company ordered to provide 10 per cent excess of seats over passengers where track conditions will permit.]

OPINION OF COMMISSION.  
(Adopted April 17, 1908.)

COMMISSIONER MALTBY:—

The passenger traffic upon surface street-car lines in the city of New York fluctuates greatly from hour to hour, day to day, season to season and year to year. The number of cars which must be run to provide adequate service upon a clear day is often quite different from the number needed at similar hours upon a stormy day. Saturdays and Sundays are very busy days upon some lines, but during the other five days in the week, the use made of these lines may be small. The traffic upon certain lines increases as summer approaches and falls off when winter returns. Meetings, conventions, parades, games, etc., constantly cause important fluctuations. To meet these varying conditions, the traffic manager must provide a varying schedule, having in mind not merely the conditions that ordinarily obtain but any special circumstances which call for a greater or less number of cars than ordinarily needed.

In attempting to fix the standard of adequate service for the various lines, the Commission has, with one exception, specified the minimum number of cars that should be run. But a fixed minimum which is reasonable and yet effective under ordinary circumstances may impose an unnecessary burden upon the company at certain times and permit overcrowding at others. The proper standard should be so elastic that it would be neither too harsh nor too mild, but at all times

\* See footnote, page 9.

so suited to the conditions as to provide as adequate service as could reasonably be expected. The requirement that a certain number of cars must be run during certain hours has been found to be too rigid and not sufficiently elastic for certain surface lines. Consequently, the order directed to be drawn in the present case provides that the number of seats in the cars passing any point of observation upon the Twenty-third street line shall exceed by at least 10 per cent the number of passengers in those cars, but never less than six per hour, or, if it is impossible to comply with this provision, that at least twenty-five cars shall pass such point of observation within every fifteen-minute period.

The purpose of this order is to give every one a seat, and a 10 per cent excess of seats over passengers has been required because of the irregularity of traffic and of cars. If the cars were to run with absolute regularity and if passengers were to board these cars at regular intervals and at equidistant points, it might not be necessary to provide a greater number of seats than passengers, but cars do not run regularly and passengers do not board the cars with absolute uniformity, and it has been found, as a matter of practical observation, that in order to provide seats for all passengers, it is necessary to run cars with a greater seating capacity than the number of passengers. Whether a 10 per cent excess is sufficient to accomplish this result cannot be determined without experiment, and it is possible that after a trial has been had it will be necessary either to increase or decrease the percentage of excess suggested.

The alternative proposition suggested, viz., that if a 10 per cent excess of seats over passengers is not provided, a certain number of cars *must* be run, has been placed in the order because it is physically impossible, under the conditions which obtain in New York, always to provide a seat for every passenger. The traffic is so heavy at times that to attempt to provide every one with a seat would so interfere with the carrying capacity of the line that the time consumed in passing from one point to another would be so great, because of the low rate of speed due to car congestion, that the advantage of a seat would probably be more than offset by the increased time required.

Between Lexington avenue and Broadway, upon Twenty-third street, the cars of the Lexington avenue line run upon the same tracks as those of the Twenty-third Street Crosstown line. It has been found by observation that it would be difficult, and perhaps impossible, to run more than fifty cars in a fifteen-minute period upon this portion of the route, but this number may be equalled and perhaps exceeded. If the cars were equally divided between the Twenty-third street line and the Lexington avenue line, it would mean that the maximum number of cars to be run upon either line would be twenty-five in each fifteen-minute interval. This is the limit fixed in the Twenty-third street order as well as the order relating to the Lexington avenue line.

The Twenty-third Street Crosstown line includes the cars running between the East river and the North river upon Twenty-third street and the branch running from Twenty-third street to the Thirty-fourth street ferry via Second avenue. The service was shown by the evidence presented at the hearings to be more inadequate upon the Twenty-third street section, but considerable improvement is necessary throughout. The present method of collecting fares at the western terminus of the line causes much delay which ought to be avoided. A separate order will be prepared upon this matter.

The cars running between West Twenty-third street and Grand Central station have been ordered discontinued because they were not largely patronized and because they materially interfered with the remainder of the traffic especially at Twenty-third street and Fourth avenue. With this change it will be possible to operate the required number of cars over the line.

Thereupon the following final order was issued:

ORDER No. 422.  
April 17, 1908.

This matter coming on upon the report of the hearing had herein on the 10th day of April, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission, made March 31, 1908, and returnable

on April 10, 1908, and that the said order was duly served upon the New York City Railway Company and upon Adrian H. Joline and Douglas Robinson as receivers of the said New York City Railway Company, and that the said service was by them duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified, on April 10, 1908, before Mr. Commissioner Maltbie, presiding, Arthur DuBois, Esq., appearing for the Commission, and there being no appearance for the New York City Railway Company nor for Adrian H. Joline or Douglas Robinson as receivers of the New York City Railway Company,

Now, it being made to appear after the proceeding upon said hearing that the regulations and service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company in respect to transportation of persons in the First District has been and is unreasonable, improper and inadequate in that the said New York City Railway Company and the said Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company do not run cars enough or with sufficient frequency or on a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that changes and improvements in the regulations and service of the said company and the said receivers as below set forth are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public.

Therefore, on motion of George S. Coleman, Esq., Counsel for the Commission, it is

*Ordered*, That the service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson its receivers on the Twenty-third Street Crosstown line be increased, supplemented and changed in the following manner, that is to say:

1. By discontinuing the operation of all cars operated between the westerly end of Twenty-third street and the Grand Central Station via Twenty-third street and Fourth avenue.

2. By operating daily including Sunday over every point of the Twenty-third Street Crosstown line including the branch running to East Thirty-fourth street ferry either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a number of seats at least 10 per cent in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of twenty-five (25) cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

And it is further ordered, That this order shall take effect on April 27, 1908, and shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearing and action thereon by the Commission, in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years.

And it is further ordered, That before April 23, 1908, the said New York City Railway Company and the said Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### New York City Railway Company.—Service on the Fourteenth street and Williamsburg Bridge line.

In the Matter  
of the

Hearing on the motion of the Commission on the question of Improvement in and Addition to the Service of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as receivers of said company.

"Fourteenth Street and Williamsburg Bridge Line."

ORDER FOR HEARING  
No. 453.  
May 1, 1908.

*It is hereby ordered*, That a hearing be had on the 14th day of May, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of

so suited to the conditions as to provide as adequate service as could reasonably be expected. The requirement that a certain number of cars must be run during certain hours has been found to be too rigid and not sufficiently elastic for certain surface lines. Consequently, the order directed to be drawn in the present case provides that the number of seats in the cars passing any point of observation upon the Twenty-third street line shall exceed by at least 10 per cent the number of passengers in those cars, but never less than six per hour, or, if it is impossible to comply with this provision, that at least twenty-five cars shall pass such point of observation within every fifteen-minute period.

The purpose of this order is to give every one a seat, and a 10 per cent excess of seats over passengers has been required because of the irregularity of traffic and of cars. If the cars were to run with absolute regularity and if passengers were to board these cars at regular intervals and at equidistant points, it might not be necessary to provide a greater number of seats than passengers, but cars do not run regularly and passengers do not board the cars with absolute uniformity, and it has been found, as a matter of practical observation, that in order to provide seats for all passengers, it is necessary to run cars with a greater seating capacity than the number of passengers. Whether a 10 per cent excess is sufficient to accomplish this result cannot be determined without experiment, and it is possible that after a trial has been had it will be necessary either to increase or decrease the percentage of excess suggested.

The alternative proposition suggested, viz., that if a 10 per cent excess of seats over passengers is not provided, a certain number of cars *must* be run, has been placed in the order because it is physically impossible, under the conditions which obtain in New York, always to provide a seat for every passenger. The traffic is so heavy at times that to attempt to provide every one with a seat would so interfere with the carrying capacity of the line that the time consumed in passing from one point to another would be so great, because of the low rate of speed due to car congestion, that the advantage of a seat would probably be more than offset by the increased time required.

Between Lexington avenue and Broadway, upon Twenty-third street, the cars of the Lexington avenue line run upon the same tracks as those of the Twenty-third Street Crosstown line. It has been found by observation that it would be difficult, and perhaps impossible, to run more than fifty cars in a fifteen-minute period upon this portion of the route, but this number may be equalled and perhaps exceeded. If the cars were equally divided between the Twenty-third street line and the Lexington avenue line, it would mean that the maximum number of cars to be run upon either line would be twenty-five in each fifteen-minute interval. This is the limit fixed in the Twenty-third street order as well as the order relating to the Lexington avenue line.

The Twenty-third Street Crosstown line includes the cars running between the East river and the North river upon Twenty-third street and the branch running from Twenty-third street to the Thirty-fourth street ferry via Second avenue. The service was shown by the evidence presented at the hearings to be more inadequate upon the Twenty-third street section, but considerable improvement is necessary throughout. The present method of collecting fares at the western terminus of the line causes much delay which ought to be avoided. A separate order will be prepared upon this matter.

The cars running between West Twenty-third street and Grand Central station have been ordered discontinued because they were not largely patronized and because they materially interfered with the remainder of the traffic especially at Twenty-third street and Fourth avenue. With this change it will be possible to operate the required number of cars over the line.

Thereupon the following final order was issued:

ORDER No. 422.  
April 17, 1908.

This matter coming on upon the report of the hearing had herein on the 10th day of April, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission, made March 31, 1908, and returnable

on April 10, 1908, and that the said order was duly served upon the New York City Railway Company and upon Adrian H. Joline and Douglas Robinson as receivers of the said New York City Railway Company, and that the said service was by them duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified, on April 10, 1908, before Mr. Commissioner Maltbie, presiding, Arthur DuBois, Esq., appearing for the Commission, and there being no appearance for the New York City Railway Company nor for Adrian H. Joline or Douglas Robinson as receivers of the New York City Railway Company,

Now, it being made to appear after the proceeding upon said hearing that the regulations and service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company in respect to transportation of persons in the First District has been and is unreasonable, improper and inadequate in that the said New York City Railway Company and the said Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company do not run cars enough or with sufficient frequency or on a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that changes and improvements in the regulations and service of the said company and the said receivers as below set forth are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public.

Therefore, on motion of George S. Coleman, Esq., Counsel for the Commission, it is

*Ordered*, That the service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson its receivers on the Twenty-third Street Crosstown line be increased, supplemented and changed in the following manner, that is to say:

1. By discontinuing the operation of all cars operated between the westerly end of Twenty-third street and the Grand Central Station via Twenty-third street and Fourth avenue.

2. By operating daily including Sunday over every point of the Twenty-third Street Crosstown line including the branch running to East Thirty-fourth street Ferry either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a number of seats at least 10 per cent in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of twenty-five (25) cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

*And it is further ordered*, That this order shall take effect on April 27, 1908, and shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearing and action thereon by the Commission, in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years.

*And it is further ordered*, That before April 23, 1908, the said New York City Railway Company and the said Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### New York City Railway Company.—Service on the Fourteenth street and Williamsburg Bridge line.

#### In the Matter of the

Hearing on the motion of the Commission on the question of Improvement in and Addition to the Service of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as receivers of said company.

"Fourteenth Street and Williamsburg Bridge Line."

ORDER FOR HEARING  
No. 458.  
May 1, 1908.

*It is hereby ordered*, That a hearing be had on the 14th day of May, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of

## 474 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Fourteenth street and Williamsburg Bridge line, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that it to say:

1. By operating daily including Sunday over every point on the Fourteenth street and Williamsburg Bridge line, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of thirty (30) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Fourteenth street and Williamsburg Bridge line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said New York City Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witness as to the matters aforesaid.

Hearings held May 14th, 22d, June 2d and 10th.

### New York City Railway Company.—Service on Christopher and East Twenty-third street ferry line.

In the Matter  
of the

Hearing on the Motion of the Commission on the Question of Improvement in and Addition to the Service of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of said Company.

Christopher and East Twenty-third Street Ferry Line.

K.

ORDER FOR HEARING  
No. 454.  
May 1, 1908.

*It is hereby ordered,* That a hearing be had on the 14th day of May, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City of New York, State of New York to inquire whether the regulations, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Christopher and East Twenty-third Street ferry line, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway

Company or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented, and changed in the following manner, that is to say:

1. By operating daily, including Sunday, over every point on the Christopher and East Twenty-third street ferry line, either

a. A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

b. A minimum number of ten (10) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Christopher and East Twenty-third street ferry line as may be just and reasonable.

And if any such changes, improvements, or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said New York City Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held May 14th, 22d, June 2d and 10th.

### New York City Railway Company.—Service on Eighty-sixth street crosstown line.

In the Matter  
of the

Hearing on the Motion of the Commission on the  
Question of Improvements in and Additions to  
the Service and Equipment of the NEW YORK  
CITY RAILWAY COMPANY and of ADRIAN H.  
JOLINE and DOUGLAS ROBINSON, as Receivers  
of Said Company.

"86th Street Crosstown Line."

ORDER FOR HEARING  
No. 463.  
May 8, 1908.

*It is hereby ordered,* That a hearing be had on the 19th day of May, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City and State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to transportation of persons in the First District, on the Eighty-sixth Street Crosstown Line, are unreasonable, improper, or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company run cars enough or with sufficient frequency or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper, and adequate to direct that the service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented, and changed in the following manner, that is to say:

1. By operating daily, including Sunday, over every point on the Eighty-sixth Street Crosstown line a sufficient number of cars in each direction past any point of observation to provide, during every fifteen-minute period of the day or night a ten per cent. excess of seats over passengers at that point.

2. By making such other and further changes in the schedule and manner of operating cars on the Eighty-sixth Street Crosstown line as may be just and reasonable.

And if any such changes, improvements, and additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least ten days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held May 19th, June 2d, 9th and 16th.

Adjourned subject to call.

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### New York City Railway Company.— Service on Eighth avenue line.

Hearing Order No. 436.  
Opinion of Commissioner Maltbie.  
Final Order No. 489.  
Extension Order No. 507.

#### In the Matter of the

Hearing on the Motion of the Commission on the Question of Improvement in and Additions to the Service and Equipment of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of the New York City Railway Company.

ORDER FOR HEARING  
No. 436.  
April 24, 1908.

#### "Eighth Avenue Line."

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*It is hereby ordered,* That a hearing be had on the 6th day of May, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City of New York, State of New York, to inquire whether the regulations, practices, and service of the New York City Railway Company or of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to the transportation of persons in the First District on the Eighth Avenue line, are unreasonable, improper, or inadequate, and whether the New York City Railway Company or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency, or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by them or offered for transportation to them on the Eighth Avenue line, and if such be found to be the fact then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper, and adequate to direct that the service of the said New York City Railway Company or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented, or changed in the following manner, that is to say:

1. By operating daily, including Sundays, over every point on the Eighth Avenue line between Thirteenth street and the northerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of twenty-five (25) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By operating daily, including Sundays, over every point of the Eighth Avenue line between Thirteenth street and the southerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) a minimum number of twelve (12) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

That at the same time and place a hearing be had to inquire whether Order No. 114, entered and filed in the office of the Public Service Commission for the First District on November 27, 1907, directed to the New York City Railway Company and to Adrian H Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to service on the Eighth Avenue line, should be abrogated, changed, or modified.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, and if the said Order No. 114 is found to be such as ought to be abrogated, changed, or modified, then to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least ten days' notice of such hearing, by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing the said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held May 6th.

OPINION OF COMMISSION.

(Adopted May 12, 1908.)

COMMISSIONER MALTIE:—

Upon December 27, 1907, the Public Service Commission adopted an order requiring the New York City Railway Company, or its receivers, to operate at least a certain number of cars during specified hours of the day, every day of the week, including Sunday. This order was issued after hearings had been held at which it appeared that the service upon the Eighth avenue line was inadequate. The standard of adequacy stated in Order No. 171 was framed to meet ordinary conditions, and observations made after the adoption of the order showed that the number of cars required to be run was not excessive when the traffic was normal. But it also appeared that at certain times, particularly upon days when the weather was inclement, the number of cars required by the order provided a greater number of seats than there were passengers. The receivers of the company also urged that a revised order should be adopted, which would allow greater leeway and more opportunity to provide such service as would meet the varying demands.

Accordingly, a hearing was ordered and duly held upon May 6th, at which time the evidence given by an assistant engineer of the Commission, who had charge of the observations, confirmed the earlier observations of the inspectors of the Commission and many statements made by the receivers. The requirements of Order No. 171 were found not to be well suited to existing conditions, for while the number of cars specified was not too large under ordinary conditions, there were days frequently when the requirements of the order made obligatory the operation of a larger number of cars than necessary.

The standard of adequate service adopted for the Twenty-third street line and several other surface lines in the borough of Manhattan seems likely to be better suited to the traffic demands upon the Eighth avenue line than the one now in force, and I have directed, therefore, that an order be prepared similar to those now in force upon the other surface lines. The standard thus provided—a ten per cent excess of seats over passengers in each fifteen-minute period or the operation of at least twenty-five cars above Thirteenth street and Twelve below—will be elastic and will not require a greater number of cars to be run at any time than is required by the demands of the traffic. It will, however, if obeyed, provide seats for passengers under ordinary circumstances, and even during rush hours will do away with crowding and reduce the number of passengers standing to a minimum. It is perhaps unnecessary to add that the Commission has always been as willing to modify an order that has ceased to be reasonable or poorly suited to changing conditions as it was to issue the order in first instance.

Thereupon the following final order was issued:

## FINAL ORDER No. 489.

May 12, 1908.

This matter coming on upon the report of the hearing had herein on May 6, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission made April 24, 1908, and returnable on May 6, 1908, and that said order was duly served on the New York City Railway Company and on Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, and that said service was by them duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on the 6th day of May, 1908, before Mr. Commissioner Maltbie presiding, Arthur Dubois, Esq., appearing for the Commission and no one appearing for the New York City Railway Company or for Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, and proof being taken,

Now it being made to appear after the proceedings in the said hearing that the service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to transportation of persons in the First District on the Eighth avenue line has been and is in certain respects unreasonable and that Order No. 171, heretofore entered and filed in the office of the Public Service Commission for the First District on December 27, 1907, was not suited to conditions of traffic on the Eighth avenue line, and it being made to appear that it would be just, reasonable and proper that the said service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, on the Eighth avenue line, should be supplemented and changed in the particulars hereinafter set forth,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered*, That the service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, receivers of the New York City Railway Company, on the Eighth avenue line, be supplemented and changed as follows:

1. By operating daily, including Sundays, over every point of the Eighth avenue line between Thirteenth street and the northerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of twenty-five (25) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not compiled with.

2. By operating daily, including Sundays, over every point of the Eighth avenue line between Thirteenth street and the southerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; or

(b) A minimum number of twelve (12) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not compiled with.

3. That Order No. 171, entered and filed in the office of the Public Service Commission for the First District on December 27, 1907, be and the same hereby is in all respects abrogated.

*Further ordered*, That this order shall take effect on May 18, 1908, and it is  
*Further ordered*, That the provisions of this order shall apply to and be binding upon Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company and shall apply to and be binding upon their successors in the same manner as the New York City Railway Company would be bound if the receivers were not in possession; and it is

*Further ordered*, That before May 18, 1908, said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed; and it is

*Further ordered*, That this order shall continue in force for a period of two years from and after taking effect of the same.

Upon application of the company the following extension order was issued:

## EXTENSION ORDER No. 507.

May 19, 1908.

An order, No 489, having been made herein on or about the 12th day of May, 1908, ordering and directing the New York City Railway Company and Adrian H. Joline and Douglas Robinson, its receivers, to supplement and change the service upon the Eighth avenue line of said company in the manner therein set forth, said

order to take effect on May 18, 1908, and Adrian H. Joline and Douglas Robinson, said receivers of said company, having applied in writing, on May 14th, for an extension of such time.

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which Final Order No. 489, above mentioned, shall take effect be, and the same hereby is, extended to and including the 1st day of June, 1908.

**New York City Railway Company.—Service on Lexington avenue line.**

Hearing Order No. 405.  
Opinion of Commissioner Maltbie.  
Final Order No. 423.  
Extension Order No. 508.

In the Matter  
of the  
Hearing on the motion of the Commission on the question of Improvements in and Additions to the Service of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as receivers of said Company.

"Lexington Avenue Line."

ORDER FOR HEARING  
No. 405.  
April 7, 1908.

*It is hereby ordered*, That a hearing be had on the 15th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Lexington avenue line, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sundays, over every point on the Lexington avenue line between Twenty-third street and Broadway and the northerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. in excess of the number of passengers at that point, the number of cars passing any point to be, however, never less than six per hour in each direction; or

(b) A minimum number of twenty-five cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Lexington avenue line between Twenty-third street and Broadway and the northerly terminus of the line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held April 15th.

**OPINION OF COMMISSION.**  
(Adopted April 17, 1908.)

**COMMISSIONER MALTBY:**

The Lexington avenue line extends from the Battery to the Harlem river, running via Broadway to Twenty-third street, East Twenty-third street and Lexington avenue. Not all of the cars used upon this line are operated between the extreme termini, certain ones being switched back at various points to accommodate the traffic. The order for the hearing related to the cars operated north of Twenty-third street and Broadway, the consideration of the cars running south of Twenty-third street upon Broadway being postponed until observations have been made of other lines which run over the same tracks below Twenty-third street.

The evidence presented at the hearing shows that the service is inadequate and that a larger number of cars should be operated. So far as the evidence goes, there is nothing to prevent a sufficient increase to accommodate the public except possibly upon the portion of the line between Lexington avenue and Broadway where the Lexington avenue cars run over the same tracks that are used by the Twenty-third Street Crosstown line. However, the inspectors of the Commission have found that it is possible to operate fifty cars in a fifteen-minute interval in each direction upon Twenty-third street between Lexington avenue and Broadway. Dividing this maximum between the two lines using these tracks it would be possible for the Lexington avenue line and the Twenty-third Street Crosstown line each to operate twenty-five cars in every fifteen-minute interval over the same tracks. I have directed that the order be so drawn as to establish this requirement.

With the exception of the portion of the line just referred to, there is no limiting point upon the Lexington Avenue line. A much larger number of cars can be run north of Twenty-third street and there is no reason known to me why the receivers cannot run sufficient number of cars to provide adequate service throughout the day.

The general principles upon which the order relating to the Lexington Avenue line is drawn have been discussed in the opinion upon the improvement of service on the Twenty-third Street Crosstown line and need not be repeated here.

Thereupon the following final order was issued.

**FINAL ORDER No. 423.**

April 17, 1908.

This matter coming on upon report of the hearing had herein on April 15, 1908, and it appearing that the said hearing was held pursuant to Hearing Order No. 405 of this Commission, dated April 7, 1908, and returnable on April 15, 1908, at 2:30 P. M., and it appearing that said order was duly served upon Messrs. Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company on the 8th day of April, 1908, and that said New York City Railway Company had due notice of said hearing, and that said hearing was had by and before the Commission on the matters embraced in said order for hearing on the 15th day of April, 1908, before Mr. Commissioner Maltby, presiding, Albert H. Walker, Esq., appearing for the Commission and no one appearing for said receivers or said company, and proof having been taken upon said hearing, and it being made to appear after the proceedings upon said hearing that the service of said railroad company and of said Adrian H. Joline and Douglas Robinson, as receivers of said company, in respect to the transportation of persons upon its Lexington avenue line, in the city and State of New York, is unreasonable, improper and inadequate in that the said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, do not operate cars enough upon said line, or with sufficient frequency, or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that it would be just, reasonable and proper that the said service of the said New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as its receivers, be increased, supplemented and changed in the particulars hereinafter set forth;

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered* as follows:

1. That said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, be and they hereby are directed

and required to operate daily, including Sunday, over every point on the Lexington avenue line between Twenty-third street and Broadway and the northerly terminus of the line, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least 10 per cent. in excess of the number of passengers at that point, the number of cars passing any point to be, however, never less than six per hour in each direction; or

(b) A minimum number of twenty-five cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

2. That said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, be and they hereby are directed and required to institute such changes, improvements and additions by or before the 1st day of May, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. It is further ordered, That said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, notify the Public Service Commission for the First District, within five days after service of this order upon them, whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

**EXTENSION ORDER No. 508.**

May 19, 1908.

An order, No. 423, having been made herein on or about the 17th day of April, 1908, ordering and directing the New York City Railway Company and Adrian H. Joline and Douglas Robinson, its receivers, to operate cars on the Lexington avenue line of said company with the frequency, at the times, and past the points therein indicated; said changes to be instituted by or before the 1st day of May, 1908, and Adrian H. Joline and Douglas Robinson, said receivers of said company having applied in writing, on May 15, 1908, for an extension of such time,

Now, on motion made and duly seconded, it is

Ordered, That the time of Adrian H. Joline and Douglas Robinson, receivers of the New York City Railway Company, within which to institute the service called for by the terms of Order No. 423 above mentioned be, and the same hereby is, extended to and including the 1st day of June, 1908.

**Metropolitan Street Railway Company — New York City Railway Company.— Service on Eighth Street Crosstown line to Brooklyn.**

Hearing Order No. 452.  
Hearing Order Case 1015.  
Opinion of Commissioner Maltbie.  
Final Order Case 1015.

In the Matter  
of the

Hearing on Motion of the Commission on the  
Question of Improvement in and Addition to the  
Service of the NEW YORK CITY RAILWAY  
COMPANY and of ADRIAN H. JOLINE and  
DOUGLAS ROBINSON, as Receivers of said Com-  
pany, in respect to Eighth Street Crosstown Line  
to Brooklyn.

ORDER FOR HEARING  
No. 452.  
May 1, 1908.

It is hereby ordered, That a hearing be had on the 14th day of May, 1908, at 3:00 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Eighth Street Crosstown line to Brooklyn are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company,

## 482 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sunday, during all the hours of the day except during the period from 12 o'clock midnight to 5 A. M., over every point on the Eighth Street Crosstown line to Brooklyn, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least 10 per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Eighth Street Crosstown line to Brooklyn as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said New York City Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held May 14th, 22d, June 2d and 10th.

On August 1, 1908, the New York City Railway Company ceased to operate the Eighth Street Crosstown line to Brooklyn and the Metropolitan Street Railway Company began its operation. The next order concerning the service upon this line was directed to the latter company and its receivers.

In the Matter  
of the

Hearing on Motion of the Commission on the Question of Improvements and Addition to the Service of the METROPOLITAN STREET RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of said Company, in respect to Eighth Street Crosstown line to Brooklyn.

CASE 1015, ORDER  
FOR HEARING.

December 11, 1908.

*It is hereby Ordered.* That a hearing be had on the 14th day of December, 1908, at 4:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the Metropolitan Street Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said Metropolitan Street Railway Company, in respect to transportation of persons in the First District on the Eighth Street Crosstown line to Brooklyn are unreasonable, improper or inadequate, and whether the said Metropolitan Street Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Metropolitan Street Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily including Sunday during all the hours of the day except during the period from 12 o'clock midnight to 5 A. M. over every point on the Eighth Street Crosstown line to Brooklyn, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen minute period of the day and night a number of

seats at least 10 per cent (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Eighth Street Crosstown line to Brooklyn as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said Metropolitan Street Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, be given at least one day's notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held December 14th.

OPINION OF COMMISSION.

(Adopted December 29, 1908.)

COMMISSIONER MALTBIE:—

"I wish to present two orders relative to the service on the Eighth Street Crosstown line to Brooklyn and the Eighth Street Crosstown line to East Tenth street ferry. In lieu of a formal report upon the evidence taken at the hearings, I wish to state a few facts which have been established.

"From investigations made by the bureau of transportation, it became apparent last spring that the service upon these two lines was quite inadequate. Orders were drafted which would require increased facilities, and after hearings were held the receivers requested that the issuance of these orders be postponed because of the lack of sufficient cars to meet the requirements. Accordingly, the hearings were adjourned and new observations were made this fall, after several months had elapsed in which the receivers had sufficient opportunity to secure additional rolling stock. From these observations it became apparent that while the service had been improved at certain hours of the day, it was more inadequate at others and that as a whole the cars are more crowded now than they were six months ago.

"The overcrowding on these lines apparently is as bad as anywhere in the city and considerably worse than it is upon some other lines. These facts have been known to the receivers for many months. They did not appear at the hearings, but letters have been received from them in which they state that they do not have sufficient cars to comply with the proposed orders without depriving other lines of the necessary equipment.

"In view of the fact that the law requires every company to provide a sufficient number of cars to give adequate service, that the receivers have had many months' notice of their delinquency, that it is their duty to provide adequate service or surrender their franchises, and that present conditions must not continue, I have prepared two orders for increased service and recommend their adoption. In a few particulars they differ from the orders upon other surface lines in Manhattan, the changes made being necessary owing to physical conditions over which this Commission has no control. Even if the order is executed in good faith, there will not be seats for all passengers during rush hours, but, because of street conditions it is not physically possible to operate upon these two lines sufficient cars to give every one a seat. However, the orders go as far as it is possible to go, and when they are obeyed the improvement will be very considerable, as the number of cars operated must be increased from twenty-five to fifty per cent."

Thereupon final Orders Nos. 1015 and 1016 were adopted.

See Order No. 1016 in the case next following.

so suited to the conditions as to provide as adequate service as could reasonably be expected. The requirement that a certain number of cars must be run during certain hours has been found to be too rigid and not sufficiently elastic for certain surface lines. Consequently, the order directed to be drawn in the present case provides that the number of seats in the cars passing any point of observation upon the Twenty-third street line shall exceed by at least 10 per cent the number of passengers in those cars, but never less than six per hour, or, if it is impossible to comply with this provision, that at least twenty-five cars shall pass such point of observation within every fifteen-minute period.

The purpose of this order is to give every one a seat, and a 10 per cent excess of seats over passengers has been required because of the irregularity of traffic and of cars. If the cars were to run with absolute regularity and if passengers were to board these cars at regular intervals and at equidistant points, it might not be necessary to provide a greater number of seats than passengers, but cars do not run regularly and passengers do not board the cars with absolute uniformity, and it has been found, as a matter of practical observation, that in order to provide seats for all passengers, it is necessary to run cars with a greater seating capacity than the number of passengers. Whether a 10 per cent excess is sufficient to accomplish this result cannot be determined without experiment, and it is possible that after a trial has been had it will be necessary either to increase or decrease the percentage of excess suggested.

The alternative proposition suggested, viz., that if a 10 per cent excess of seats over passengers is not provided, a certain number of cars *must* be run, has been placed in the order because it is physically impossible, under the conditions which obtain in New York, always to provide a seat for every passenger. The traffic is so heavy at times that to attempt to provide every one with a seat would so interfere with the carrying capacity of the line that the time consumed in passing from one point to another would be so great, because of the low rate of speed due to car congestion, that the advantage of a seat would probably be more than offset by the increased time required.

Between Lexington avenue and Broadway, upon Twenty-third street, the cars of the Lexington avenue line run upon the same tracks as those of the Twenty-third Street Crosstown line. It has been found by observation that it would be difficult, and perhaps impossible, to run more than fifty cars in a fifteen-minute period upon this portion of the route, but this number may be equalled and perhaps exceeded. If the cars were equally divided between the Twenty-third street line and the Lexington avenue line, it would mean that the maximum number of cars to be run upon either line would be twenty-five in each fifteen-minute interval. This is the limit fixed in the Twenty-third street order as well as the order relating to the Lexington avenue line.

The Twenty-third Street Crosstown line includes the cars running between the East river and the North river upon Twenty-third street and the branch running from Twenty-third street to the Thirty-fourth street ferry via Second avenue. The service was shown by the evidence presented at the hearings to be more inadequate upon the Twenty-third street section, but considerable improvement is necessary throughout. The present method of collecting fares at the western terminus of the line causes much delay which ought to be avoided. A separate order will be prepared upon this matter.

The cars running between West Twenty-third street and Grand Central station have been ordered discontinued because they were not largely patronized and because they materially interfered with the remainder of the traffic especially at Twenty-third street and Fourth avenue. With this change it will be possible to operate the required number of cars over the line.

Thereupon the following final order was issued:

ORDER No. 422.

April 17, 1908.

This matter coming on upon the report of the hearing had herein on the 10th day of April, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission, made March 31, 1908, and returnable

on April 10, 1908, and that the said order was duly served upon the New York City Railway Company and upon Adrian H. Joline and Douglas Robinson as receivers of the said New York City Railway Company, and that the said service was by them duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified, on April 10, 1908, before Mr. Commissioner Maltbie, presiding, Arthur DuBois, Esq., appearing for the Commission, and there being no appearance for the New York City Railway Company nor for Adrian H. Joline or Douglas Robinson as receivers of the New York City Railway Company,

Now, it being made to appear after the proceeding upon said hearing that the regulations and service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company in respect to transportation of persons in the First District has been and is unreasonable, improper and inadequate in that the said New York City Railway Company and the said Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company do not run cars enough or with sufficient frequency or on reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that changes and improvements in the regulations and service of the said company and the said receivers as below set forth are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public.

Therefore, on motion of George S. Coleman, Esq., Counsel for the Commission, it is

**Ordered.** That the service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson its receivers on the Twenty-third Street Crosstown line be increased, supplemented and changed in the following manner, that is to say:

1. By discontinuing the operation of all cars operated between the westerly end of Twenty-third street and the Grand Central Station via Twenty-third street and Fourth avenue.

2. By operating daily including Sunday over every point of the Twenty-third Street Crosstown line including the branch running to East Thirty-fourth street ferry either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a number of seats at least 10 per cent in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of twenty-five (25) cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

*And it is further ordered,* That this order shall take effect on April 27, 1908, and shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearing and action thereon by the Commission, in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years.

*And it is further ordered,* That before April 23, 1908, the said New York City Railway Company and the said Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### New York City Railway Company.—Service on the Fourteenth street and Williamsburg Bridge line.

In the Matter  
of the

Hearing on the motion of the Commission on the  
question of Improvement in and Addition to the  
Service of the NEW YORK CITY RAILWAY  
COMPANY and of ADRIAN H. JOLINE and  
DOUGLAS ROBINSON, as receivers of said  
company.

"Fourteenth Street and Williamsburg Bridge  
Line."

ORDER FOR HEARING  
No. 453.  
May 1, 1908.

*It is hereby ordered,* That a hearing be had on the 14th day of May, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of

Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Fourteenth street and Williamsburg Bridge line, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that it to say:

1. By operating daily including Sunday over every point on the Fourteenth street and Williamsburg Bridge line, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of thirty (30) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Fourteenth street and Williamsburg Bridge line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said New York City Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witness as to the matter aforesaid.

Hearings held May 14th, 22d, June 2d and 10th.

### New York City Railway Company.—Service on Christopher and East Twenty-third street ferry line.

In the Matter  
of the

Hearing on the Motion of the Commission on the  
Question of Improvement in and Addition to the  
Service of the NEW YORK CITY RAILWAY  
COMPANY and of ADRIAN H. JOLINE and  
DOUGLAS ROBINSON, as Receivers of said  
Company.

Christopher and East Twenty-third Street Ferry  
Line.

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ORDER FOR HEARING  
No. 454.  
May 1, 1908.

*It is hereby ordered.* That a hearing be had on the 14th day of May, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City of New York, State of New York to inquire whether the regulations, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Christopher and East Twenty-third Street ferry line, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway

**Company or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented, and changed in the following manner, that is to say:**

**1. By operating daily, including Sunday, over every point on the Christopher and East Twenty-third street ferry line, either**

**a. A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or**

**b. A minimum number of ten (10) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.**

**2. By making such other and further changes in the schedule and manner of operating cars on the Christopher and East Twenty-third street ferry line as may be just and reasonable.**

**And if any such changes, improvements, or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.**

**All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.**

**Further ordered,** That the said New York City Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held May 14th, 22d, June 2d and 10th.

### New York City Railway Company.—Service on Eighty-sixth street crosstown line.

In the Matter  
of the

Hearing on the Motion of the Commission on the Question of Improvements in and Additions to the Service and Equipment of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of Said Company.

ORDER FOR HEARING  
No. 463.  
May 8, 1908.

"86th Street Crosstown Line."

*It is hereby ordered,* That a hearing be had on the 19th day of May, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City and State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to transportation of persons in the First District, on the Eighty-sixth Street Crosstown Line, are unreasonable, improper, or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company run cars enough or with sufficient frequency or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper, and adequate to direct that the service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented, and changed in the following manner, that is to say:

**1. By operating daily, including Sunday, over every point on the Eighty-sixth Street Crosstown line a sufficient number of cars in each direction past any point of observation to provide, during every fifteen-minute period of the day or night a ten per cent. excess of seats over passengers at that point.**

**2. By making such other and further changes in the schedule and manner of operating cars on the Eighty-sixth Street Crosstown line as may be just and reasonable.**

**And if any such changes, improvements, and additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.**

476 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least ten days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held May 19th, June 2d, 9th and 16th.

Adjourned subject to call.

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New York City Railway Company.—Service on Eighth avenue line.

Hearing Order No. 436.  
Opinion of Commissioner Maltbie.  
Final Order No. 489.  
Extension Order No. 507.

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In the Matter  
of the

Hearing on the Motion of the Commission on the Question of Improvement in and Additions to the Service and Equipment of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of the New York City Railway Company.

ORDER FOR HEARING  
No. 436.  
April 24, 1908.

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"Eighth Avenue Line."

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*It is hereby ordered,* That a hearing be had on the 6th day of May, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, City of New York, State of New York, to inquire whether the regulations, practices, and service of the New York City Railway Company or of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to the transportation of persons in the First District on the Eighth Avenue line, are unreasonable, improper, or inadequate, and whether the New York City Railway Company or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency, or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by them or offered for transportation to them on the Eighth Avenue line, and if such be found to be the fact then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper, and adequate to direct that the service of the said New York City Railway Company or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented, or changed in the following manner, that is to say:

1. By operating daily, including Sundays, over every point on the Eighth Avenue line between Thirteenth street and the northerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of twenty-five (25) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By operating daily, including Sundays, over every point of the Eighth Avenue line between Thirteenth street and the southerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) a minimum number of twelve (12) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

That at the same time and place a hearing be had to inquire whether Order No. 114, entered and filed in the office of the Public Service Commission for the First District on November 27, 1907, directed to the New York City Railway Company and to Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to service on the Eighth Avenue line, should be abrogated, changed, or modified.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, and if the said Order No. 114 is found to be such as ought to be abrogated, changed, or modified, them to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least ten days' notice of such hearing, by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing the said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held May 6th.

OPINION OF COMMISSION.

(Adopted May 12, 1908.)

COMMISSIONER MALTBY:—

Upon December 27, 1907, the Public Service Commission adopted an order requiring the New York City Railway Company, or its receivers, to operate at least a certain number of cars during specified hours of the day, every day of the week, including Sunday. This order was issued after hearings had been held at which it appeared that the service upon the Eighth avenue line was inadequate. The standard of adequacy stated in Order No. 171 was framed to meet ordinary conditions, and observations made after the adoption of the order showed that the number of cars required to be run was not excessive when the traffic was normal. But it also appeared that at certain times, particularly upon days when the weather was inclement, the number of cars required by the order provided a greater number of seats than there were passengers. The receivers of the company also urged that a revised order should be adopted, which would allow greater leeway and more opportunity to provide such service as would meet the varying demands.

Accordingly, a hearing was ordered and duly held upon May 6th, at which time the evidence given by an assistant engineer of the Commission, who had charge of the observations, confirmed the earlier observations of the inspectors of the Commission and many statements made by the receivers. The requirements of Order No. 171 were found not to be well suited to existing conditions, for while the number of cars specified was not too large under ordinary conditions, there were days frequently when the requirements of the order made obligatory the operation of a larger number of cars than necessary.

The standard of adequate service adopted for the Twenty-third street line and several other surface lines in the borough of Manhattan seems likely to be better suited to the traffic demands upon the Eighth avenue line than the one now in force, and I have directed, therefore, that an order be prepared similar to those now in force upon the other surface lines. The standard thus provided—a ten per cent excess of seats over passengers in each fifteen-minute period or the operation of at least twenty-five cars above Thirteenth street and Twelve below—will be elastic and will not require a greater number of cars to be run at any time than is required by the demands of the traffic. It will, however, if obeyed, provide seats for passengers under ordinary circumstances, and even during rush hours will do away with crowding and reduce the number of passengers standing to a minimum. It is perhaps unnecessary to add that the Commission has always been as willing to modify an order that has ceased to be reasonable or poorly suited to changing conditions as it was to issue the order in first instance.

Thereupon the following final order was issued:

## FINAL ORDER No. 489.

May 12, 1908.

This matter coming on upon the report of the hearing had herein on May 6, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission made April 24, 1908, and returnable on May 6, 1908, and that said order was duly served on the New York City Railway Company and on Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, and that said service was by them duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on the 6th day of May, 1908, before Mr. Commissioner Maltbie presiding, Arthur DuBois, Esq., appearing for the Commission and no one appearing for the New York City Railway Company or for Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, and proof being taken,

Now it being made to appear after the proceedings in the said hearing that the service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, in respect to transportation of persons in the First District on the Eighth avenue line has been and is in certain respects unreasonable and that Order No. 171, heretofore entered and filed in the office of the Public Service Commission for the First District on December 27, 1907, was not suited to conditions of traffic on the Eighth avenue line, and it being made to appear that it would be just, reasonable and proper that the said service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, on the Eighth avenue line, should be supplemented and changed in the particulars hereinafter set forth,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission. It is Ordered, That the service of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, receivers of the New York City Railway Company, on the Eighth avenue line, be supplemented and changed as follows:

1. By operating daily, including Sundays, over every point of the Eighth avenue line between Thirteenth street and the northerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of twenty-five (25) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By operating daily, including Sundays, over every point of the Eighth avenue line between Thirteenth street and the southerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; or

(b) A minimum number of twelve (12) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

3. That Order No. 171, entered and filed in the office of the Public Service Commission for the First District on December 27, 1907, be and the same hereby is in all respects abrogated.

*Further ordered*, That this order shall take effect on May 18, 1908, and it is  
*Further ordered*, That the provisions of this order shall apply to and be binding upon Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company and shall apply to and be binding upon their successors in the same manner as the New York City Railway Company would be bound if the receivers were not in possession; and it is

*Further ordered*, That before May 18, 1908, said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed; and it is

*Further ordered*, That this order shall continue in force for a period of two years from and after taking effect of the same.

Upon application of the company the following extension order was issued:

## EXTENSION ORDER No. 507.

May 19, 1908.

An order, No 489, having been made herein on or about the 12th day of May, 1908, ordering and directing the New York City Railway Company and Adrian H. Joline and Douglas Robinson, its receivers, to supplement and change the service upon the Eighth avenue line of said company in the manner therein set forth, said

**order to take effect on May 18, 1908, and Adrian H. Joline and Douglas Robinson, said receivers of said company, having applied in writing, on May 14th, for an extension of such time.**

**Now, on motion made and duly seconded, it is  
Ordered, That the time within which Final Order No. 489, above mentioned, shall take effect be, and the same hereby is, extended to and including the 1st day of June, 1908.**

**New York City Railway Company.—Service on Lexington avenue line.**

Hearing Order No. 405.  
Opinion of Commissioner Maltbie.  
Final Order No. 423.  
Extension Order No. 508.

In the Matter  
of the

Hearing on the motion of the Commission on the question of Improvements in and Additions to the Service of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of said Company.

ORDER FOR HEARING  
No. 405.  
April 7, 1908.

"Lexington Avenue Line."

*It is hereby ordered,* That a hearing be had on the 15th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Lexington avenue line, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sundays, over every point on the Lexington avenue line between Twenty-third street and Broadway and the northerly terminus of the line either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. in excess of the number of passengers at that point, the number of cars passing any point to be, however, never less than six per hour in each direction; or

(b) A minimum number of twenty-five cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Lexington avenue line between Twenty-third street and Broadway and the northerly terminus of the line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held April 15th.

**OPINION OF COMMISSION.**  
(Adopted April 17, 1908.)

**COMMISSIONER MALTBY:**—

The Lexington avenue line extends from the Battery to the Harlem river, running via Broadway to Twenty-third street, East Twenty-third street and Lexington avenue. Not all of the cars used upon this line are operated between the extreme termini, certain ones being switched back at various points to accommodate the traffic. The order for the hearing related to the cars operated north of Twenty-third street and Broadway, the consideration of the cars running south of Twenty-third street upon Broadway being postponed until observations have been made of other lines which run over the same tracks below Twenty-third street.

The evidence presented at the hearing shows that the service is inadequate and that a larger number of cars should be operated. So far as the evidence goes, there is nothing to prevent a sufficient increase to accommodate the public except possibly upon the portion of the line between Lexington avenue and Broadway where the Lexington avenue cars run over the same tracks that are used by the Twenty-third Street Crosstown line. However, the inspectors of the Commission have found that it is possible to operate fifty cars in a fifteen-minute interval in each direction upon Twenty-third street between Lexington avenue and Broadway. Dividing this maximum between the two lines using these tracks it would be possible for the Lexington avenue line and the Twenty-third Street Crosstown line each to operate twenty-five cars in every fifteen-minute interval over the same tracks. I have directed that the order be so drawn as to establish this requirement.

With the exception of the portion of the line just referred to, there is no limiting point upon the Lexington Avenue line. A much larger number of cars can be run north of Twenty-third street and there is no reason known to me why the receivers cannot run sufficient number of cars to provide adequate service throughout the day.

The general principles upon which the order relating to the Lexington Avenue line is drawn have been discussed in the opinion upon the improvement of service on the Twenty-third Street Crosstown line and need not be repeated here.

Thereupon the following final order was issued.

**FINAL ORDER No. 423.**

April 17, 1908.

This matter coming on upon report of the hearing had herein on April 15, 1908, and it appearing that the said hearing was held pursuant to Hearing Order No. 405 of this Commission, dated April 7, 1908, and returnable on April 15, 1908, at 2:30 P. M., and it appearing that said order was duly served upon Messrs. Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company on the 8th day of April, 1908, and that said New York City Railway Company had due notice of said hearing, and that said hearing was had by and before the Commission on the matters embraced in said order for hearing on the 15th day of April, 1908, before Mr. Commissioner Maltby, presiding, Albert H. Walker, Esq., appearing for the Commission and no one appearing for said receivers or said company, and proof having been taken upon said hearing, and it being made to appear after the proceedings upon said hearing that the service of said railroad company and of said Adrian H. Joline and Douglas Robinson, as receivers of said company, in respect to the transportation of persons upon its Lexington avenue line, in the city and State of New York, is unreasonable, improper and inadequate in that the said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, do not operate cars enough upon said line, or with sufficient frequency, or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that it would be just, reasonable and proper that the said service of the said New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as its receivers, be increased, supplemented and changed in the particulars hereinafter set forth;

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered* as follows:

1. That said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, be and they hereby are directed

and required to operate daily, including Sunday, over every point on the Lexington avenue line between Twenty-third street and Broadway and the northerly terminus of the line, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least 10 per cent. in excess of the number of passengers at that point, the number of cars passing any point to be, however, never less than six per hour in each direction; or

(b) A minimum number of twenty-five cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

2. That said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, be and they hereby are directed and required to institute such changes, improvements and additions by or before the 1st day of May, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. It is further ordered, That said New York City Railway Company and said Adrian H. Joline and Douglas Robinson, as receivers of said company, notify the Public Service Commission for the First District, within five days after service of this order upon them, whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

**EXTENSION ORDER No. 508.**

May 19, 1908.

An order, No. 423, having been made herein on or about the 17th day of April, 1908, ordering and directing the New York City Railway Company and Adrian H. Joline and Douglas Robinson, its receivers, to operate cars on the Lexington avenue line of said company with the frequency, at the times, and past the points therein indicated; said changes to be instituted by or before the 1st day of May, 1908, and Adrian H. Joline and Douglas Robinson, said receivers of said company having applied in writing, on May 15, 1908, for an extension of such time,

Now, on motion made and duly seconded, it is

Ordered, That the time of Adrian H. Joline and Douglas Robinson, receivers of the New York City Railway Company, within which to institute the service called for by the terms of Order No. 423 above mentioned be, and the same hereby is, extended to and including the 1st day of June, 1908.

**Metropolitan Street Railway Company — New York City Railway Company.— Service on Eighth Street Crosstown line to Brooklyn.**

Hearing Order No. 452.  
Hearing Order Case 1015.  
Opinion of Commissioner Maltbie.  
Final Order Case 1015.

In the Matter  
of the

Hearing on Motion of the Commission on the  
Question of Improvement in and Addition to the  
Service of the NEW YORK CITY RAILWAY  
COMPANY and of ADRIAN H. JOLINE and  
DOUGLAS ROBINSON, as Receivers of said Com-  
pany, in respect to Eighth Street Crosstown Line  
to Brooklyn.

ORDER FOR HEARING  
No. 452.  
May 1, 1908.

It is hereby ordered, That a hearing be had on the 14th day of May, 1908, at 3:00 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Eighth Street Crosstown line to Brooklyn are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company,

run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sunday, during all the hours of the day except during the period from 12 o'clock midnight to 5 A. M., over every point on the Eighth Street Crosstown line to Brooklyn, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least 10 per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Eighth Street Crosstown line to Brooklyn as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said New York City Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held May 14th, 22d, June 2d and 10th.

On August 1, 1908, the New York City Railway Company ceased to operate the Eighth Street Crosstown line to Brooklyn and the Metropolitan Street Railway Company began its operation. The next order concerning the service upon this line was directed to the latter company and its receivers.

In the Matter  
of the

Hearing on Motion of the Commission on the Question of Improvements and Addition to the Service of the METROPOLITAN STREET RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of said Company, in respect to Eighth Street Crosstown line to Brooklyn.

CASE 1015, ORDER  
FOR HEARING.

December 11, 1908.

*It is hereby Ordered,* That a hearing be had on the 14th day of December, 1908, at 4:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the Metropolitan Street Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said Metropolitan Street Railway Company, in respect to transportation of persons in the First District on the Eighth Street Crosstown line to Brooklyn are unreasonable, improper or inadequate, and whether the said Metropolitan Street Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Metropolitan Street Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily including Sunday during all the hours of the day except during the period from 12 o'clock midnight to 5 A. M. over every point on the Eighth Street Crosstown line to Brooklyn, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen minute period of the day and night a number of

seats at least 10 per cent (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of thirteen (15) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Eighth Street Crosstown line to Brooklyn as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered.* That the said Metropolitan Street Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, be given at least one day's notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held December 14th.

OPINION OF COMMISSION.

(Adopted December 29, 1908.)

COMMISSIONER MALTBIE:—

"I wish to present two orders relative to the service on the Eighth Street Crosstown line to Brooklyn and the Eighth Street Crosstown line to East Tenth street ferry. In lieu of a formal report upon the evidence taken at the hearings, I wish to state a few facts which have been established.

"From investigations made by the bureau of transportation, it became apparent last spring that the service upon these two lines was quite inadequate. Orders were drafted which would require increased facilities, and after hearings were held the receivers requested that the issuance of these orders be postponed because of the lack of sufficient cars to meet the requirements. Accordingly, the hearings were adjourned and new observations were made this fall, after several months had elapsed in which the receivers had sufficient opportunity to secure additional rolling stock. From these observations it became apparent that while the service had been improved at certain hours of the day, it was more inadequate at others and that as a whole the cars are more crowded now than they were six months ago.

"The overcrowding on these lines apparently is as bad as anywhere in the city and considerably worse than it is upon some other lines. These facts have been known to the receivers for many months. They did not appear at the hearings, but letters have been received from them in which they state that they do not have sufficient cars to comply with the proposed orders without depriving other lines of the necessary equipment.

"In view of the fact that the law requires every company to provide a sufficient number of cars to give adequate service, that the receivers have had many months' notice of their delinquency, that it is their duty to provide adequate service or surrender their franchises, and that present conditions must not continue, I have prepared two orders for increased service and recommend their adoption. In a few particulars they differ from the orders upon other surface lines in Manhattan, the changes made being necessary owing to physical conditions over which this Commission has no control. Even if the order is executed in good faith, there will not be seats for all passengers during rush hours, but, because of street conditions it is not physically possible to operate upon these two lines sufficient cars to give every one a seat. However, the orders go as far as it is possible to go, and when they are obeyed the improvement will be very considerable, as the number of cars operated must be increased from twenty-five to fifty per cent."

Thereupon final Orders Nos. 1015 and 1016 were adopted.

See Order No. 1016 in the case next following.

## FINAL ORDER CASE No. 1015.

December 29, 1908.

The Commission being of the opinion, after a hearing held on December 14, 1908, before Mr. Commissioner Maltbie, that the regulations and service of the Metropolitan Street Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of the said company, on the Eighth Street Crosstown line to Brooklyn, have been and are unreasonable, improper, and inadequate, in that too few cars are operated on the said line,

Now, therefore, it is

*Ordered*, That the service of the Metropolitan Street Railway Company and of Adrian H. Joline and Douglas Robinson, as its receivers, on the Eighth Street Crosstown line to Brooklyn, be increased, supplemented and changed in the following manner, that is to say:

By operating daily, including Sunday, eastbound and westbound, on Christopher street past the intersection of the middle lines of Christopher street and Washington street, on Eighth street past the intersection of the middle lines of Eighth street and Third avenue, and on Delancey street, at the westerly end of the Williamsburg Bridge, during all hours of the day, except during the period from 12 o'clock midnight to 5 o'clock A. M., in each fifteen (15) minute period, either

(a) A sufficient number of cars in each direction to provide at each of the points named above a number of cars at least equal to the number of passengers at such points; the number of cars passing each of the points named to be, however, never less than six (6) per hour in each direction; or  
 (b) A minimum number of fifteen (15) cars in one direction past each of the points named above.

*Further ordered*, That this order take effect January 18, 1909, and remain in effect for the period of two years from and after that date.

*Further ordered*, That Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, notify the Public Service Commission for the First District not later than January 6, 1909, whether the terms of this order are accepted and will be obeyed.

### Metropolitan Street Railway Company — New York City Railway Company.— Service on Eighth Street Crosstown line to East Tenth street ferry.

Hearing Order No. 451.

Hearing Order Case 1016.

Opinion of Commissioner Maltbie.

Final Order Case 1016.

In the Matter  
of the

Hearing on the motion of the Commission on the Question of Improvement in and Addition to the Service of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of said Company.

"Eighth Street Crosstown Line to East Tenth Street Ferry."

### ORDER FOR HEARING

No. 451.

May 1, 1908.

*It is hereby ordered*, That a hearing be had on the 14th day of May, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said New York City Railway Company, in respect to transportation of persons in the First District on the Eighth Street Crosstown line to East Tenth street ferry, are unreasonable, improper or inadequate, and whether the said New York City Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said New York City Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sunday, over every point on the Eighth Street Crosstown line to East Tenth Street ferry, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Eighth Street Crosstown line to East Tenth Street ferry as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said New York City Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company, be given at least five days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining witnesses as to the matters aforesaid.

Hearings held May 14th, 22d, June 2d and 20th.

On August 1, 1908, the New York City Railway Company ceased to operate the Eighth Street Crosstown line and the Metropolitan Street Railway Company began its operation. The next order concerning the service upon this line was directed to the latter company and its receivers.

In the Matter  
of the

Hearing on motion of the Commission on the Question of Improvement in and Addition to the Service of the METROPOLITAN STREET RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of said Company.

CASE No. 1016.  
ORDER FOR HEARING.  
December 11, 1908.

"Eighth Street Crosstown Line to East Tenth Street Ferry."

*It is hereby ordered,* That a hearing be had on the 14th day of December, 1908, at 4:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices and service of the Metropolitan Street Railway Company, or of Adrian H. Joline and Douglas Robinson, as receivers of the said Metropolitan Street Railway Company, in respect to transportation of persons in the First District on the Eighth Street Crosstown line to East Tenth Street ferry, are unreasonable, improper or inadequate, and whether the said Metropolitan Street Railway Company, or the said Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, run cars enough or without sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Metropolitan Street Railway Company, or of Adrian H. Joline and Douglas Robinson, its receivers, be increased, supplemented and changed in the following manner that is to say:

1. By operating daily, including Sunday, over every point on the Eighth Street Crosstown line to East Tenth Street ferry, either:

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction in each fifteen (15) minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Eighth Street Crosstown line to East Tenth Street ferry as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Metropolitan Street Railway Company, and Adrian H. Joline and Douglas Robinson, as receivers of the said Metropolitan Street Railway Company, be given at least one day's notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receivers be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held December 14th.

See opinion in preceding case upon which the following final order was issued:

**FINAL ORDER CASE No. 1016.**  
December 29, 1908.

The Commission being of the opinion, after a hearing, held on December 14, 1908, before Mr. Commissioner Maitbie, that the regulations and service of the Metropolitan Street Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of the said company, on the Eighth Street Crosstown line to East Tenth street ferry, have been and are unreasonable, improper and inadequate, in that too few cars are operated on the said line,

Now, therefore, it is

*Ordered,* That the service of the Metropolitan Street Railway Company and of Adrian H. Joline and Douglas Robinson, as its receivers, on the Eighth Street Crosstown line to East Tenth street ferry be increased, supplemented and changed in the following manner, that is to say:

By operating daily, including Sunday, eastbound and westbound, on Christopher street past the intersection of the middle lines of Christopher street and Washington street, on Eighth street past the intersection of the middle lines of Eighth street and Third Avenue and on Tenth street, past the intersection of the middle lines of Tenth street and Avenue A, during all hours of the day, except during the period from 12 o'clock midnight to 5 o'clock A. M., in each fifteen (15) minute period, either

(a) A sufficient number of cars in each direction to provide at each of the points named above a number of seats at least equal to the number of passengers at such point; the number of cars passing each of the points named to be, however, never less than six (6) per hour in each direction; or

(b) A minimum number of fifteen (15) cars in one direction past each of the points above named.

*Further ordered,* That this order take effect January 18, 1909, and remain in effect for a period of two years from and after that date.

*Further ordered,* That Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Company, notify the Public Service Commission for the First District not later than January 6, 1909, whether the terms of this order are accepted and will be obeyed.

**Richmond Light and Railroad Company.—Service and equipment.**

Final Order No. 185.  
Rehearing Order No. 354.  
Final Order No. 377.

In the Matter  
of the

Hearing on the motion of the Commission on the  
Question of Improvement in and Addition to the  
Service and Equipment of the RICHMOND  
LIGHT AND RAILROAD COMPANY.

ORDER No. 185.  
January 4, 1908.

Under order for hearing, made November 11, 1907.

This matter coming on upon the report of the hearing had herein on the 21st day of November, 1907, and it appearing that the said hearing was held by and pursuant to an order of this Commission made November 11, 1907, and returnable

on November 21, 1907, and that the said order was duly served upon the Richmond Light and Railroad Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on November 21, 1907, and by an adjournment duly had on November 27, 1907, and by an adjournment duly had on December 4, 1907, and by an adjournment duly had on December 6, 1907, and by an adjournment duly had on December 9, 1907, and by an adjournment duly had on December 11, 1907, and by an adjournment duly had on December 17, 1907, and by an adjournment duly had on December 20, 1907, and by an adjournment duly had on December 31, 1907, and by an adjournment duly had again on December 31, 1907, and at all of said sessions Mr. Commissioner McCarroll presiding, and Abel E. Blackmar, Esq., counsel to the Commission, appearing for the Commission at the session of November 21, 1907, Adrian H. Larkin, Esq., appearing for the Richmond Light and Railroad Company, and at all of the other sessions Arthur DuBols, Esq., appearing for the Commission, and Adrian H. Larkin, Esq., appearing for the Richmond Light and Railroad Company, and proof having been taken at all of said sessions, except, at the two sessions of December 31, 1907,

Now it being made to appear after the proceedings upon said hearing that changes, improvements and additions in and to the regulations, equipment, appliances and service of the Richmond Light and Railroad Company in respect to the transportation of persons in the First District upon its various lines ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public, or of its employees, or in order to secure adequate service and facilities for the transportation of passengers, and it being made to appear that the changes, additions and improvements in regulations, equipment, appliances and service of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper, and ought reasonably to be made in order to promote the security and convenience of the public and employees.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is ordered,

1. That the service of the Richmond Light and Railroad Company, on its St. George to Elizabethport ferry line, be supplemented and changed as follows:

(a) That the schedules be so arranged that daily, except Sundays, not less than two (2) cars leave St. George within five minutes after the arrival of each ferry-boat from Manhattan, between the hours of 5 and 7 P. M., and run over the Richmond terrace, at least to the foot of Richmond avenue, Port Richmond. One of the cars must continue to the Elizabethport ferry.

(b) That the Sunday schedules be so arranged that not less than forty-four (44) cars be run from St. George to Elizabethport ferry over the Richmond terrace between the hours of 12 A. M. and 6 P. M.

2. That all cars signed to run to St. George or to the New York ferry at St. George be actually run over the elevated structure to the entrance of the ferry and not stopped at Jay street.

3. That the service of the Richmond Light and Railroad Company on its Castleton avenue line be supplemented and changed as follows:

(a) That the schedules be so arranged that daily, except Sundays, not less than two (2) cars leave St. George within five minutes after the arrival of each ferry-boat from Manhattan, between the hours of 5 and 7 P. M., and run over the Castleton avenue route to Columbia street.

(b) That the schedules be so arranged that daily, except Sundays, not less than two (2) cars leave Columbia street and run over the Castleton avenue route to St. George to meet each boat leaving St. George between the hours of 7:45 and 8:45 A. M., both inclusive.

4. That the following additions and changes in equipment be made and completed as soon as possible but not later than May 15, 1908:

(a) That the company pass through the shops, making every required repair, all the present open car bodies, and all trucks and equipment, turning them out in as perfect condition as possible.

(b) That the company provide and equip all cars in service with two new automatic circuit breakers of sufficient capacity and modern type.

(c) That the company provide and equip each of its cars in service with a gear case, for each motor thereon, and that each gear case shall at all times be maintained with sufficient gear grease to reduce the noise made by the gear and pinion, to a minimum. The gear case should preferably be maintained half full of grease.

(d) That the company provide and maintain, in good condition, on all of its cars in service, two head lights, of the type used upon the 15-bench open cars, numbered 71 to 90, or light of equal power that will not project from the dash of the car further than those upon the 15-bench open cars numbered 71 to 90.

(e) That the company provide and maintain, in good condition, two sets of fenders, complete, upon each car in service.

(f) That the company provide and equip each car in service with proper lighting arrest equipment.

(g) That the company exercise care that trolley ropes are of sufficient length to permit of trolley wheel following the trolley wire at railway crossings.

(h) That no more overhead trolley wire of the size known as No. 0 be erected, but that all new wire constructed and all repairs and replacing of old or worn wire be made with No. 00 wire.

(i) That the company carefully examine all wooden poles and change those that show a dangerous condition from decay or other cause and reset all poles that have excessive lean.

(j) That the company overhaul all sections of track now in condition that cars cannot be operated at normal speed without severe oscillation, and make track suitable for satisfactory operation of 15-bench open cars. This refers particularly to all sections outside the paved streets.

(k) That the company exercise great care that all cars are properly equipped with sand box outfits and that they are at all times kept supplied with suitable sand. And it is further

*Ordered*, That this order shall take effect on January 10, 1908, and shall continue in force for a period of two years from and after the date of its taking effect, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed, or in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years. And it is further.

*Ordered*, That before January 10, 1908, the said Richmond Light and Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon request of the company the following rehearing order was issued:

**REHEARING ORDER No. 354.**

March 20, 1908.

An order having been made and filed herein on January 4, 1908, No. 185, under and pursuant to an order for hearing made November 11, 1907, No. 75, and thereafter having been duly served upon the Richmond Light and Railroad Company, the same to take effect immediately, and in and by said order the said Richmond Light and Railroad Company having been required to notify this Commission before January 10, 1908, whether the terms of said order No. 185 are accepted and will be obeyed, and the said Richmond Light and Railroad Company having, on March 12, 1908, applied to this Commission for a rehearing in respect to some of the matters contained in said Order No. 185, and sufficient reason for said rehearing being made to appear,

*Ordered*, That the said request for a rehearing be granted and that such rehearing upon the matters contained in said Order No. 185, entered and filed on January 4, 1908, be held on the 25th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising since the making of Order No. 185, whether the original Order No. 185 or any part thereof is in any respect unjust or unwarranted and whether the said Order No. 185 should, in any respects, be abrogated, changed or modified, and if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of such changes or modifications of the said order and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Richmond Light and Railroad Company be given at least three days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing the said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held March 25th.

The following final order was issued:

**ORDER No. 377. MADE AFTER REHEARING.**

March 27, 1908.

This matter coming on upon the report of the rehearing of Order No. 185, had herein on the 25th day of March, 1908, and it appearing that the said rehearing was held by and pursuant to an order of this Commission, dated March 20, 1908, No. 354, and returnable on the 25th day of March, 1908, and that the said order was duly served upon the Richmond Light and Railroad Company and that said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on March 25, 1908, before Mr. Commissioner McCarroll, presiding, Adrian H. Larkin, Esq., appearing for the Richmond Light and Railroad Company and Arthur DuBois, Esq., appearing for the Commission, and the said Richmond Light and Railroad Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses, and testimony having been taken,

Now, after the proceeding upon said rehearing and after consideration of the facts, including those arising since the making of the order, the Commission being of opinion that the original Order No. 185 for the improvement in, and additions to the service and equipment of the Richmond Light and Railroad Company should be changed and modified in certain particulars;

Therefore, on motion of George S. Coleman, Esq. Counsel to the Commission, it is

Ordered, That the Order No. 185, entered January 4, 1908, and directed to the improvement in and additions to the service and equipment of the Richmond Light and Railroad Company be and the same is changed and modified to read as follows:

ORDER No. 185.

This matter coming on upon the report of the hearing had herein on the 21st day of November, 1907, and it appearing that the said hearing was held by and pursuant to an order of this Commission made November 11, 1907, and returnable on November 21, 1907, and that the said order was duly served upon the Richmond Light and Railroad Company and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on November 21, 1907, and by an adjournment duly had on November 27, 1907, and by an adjournment duly had on December 4, 1907, and by adjournment duly had on December 6, 1907, and by adjournment duly had on December 9, 1907, and by adjournment duly had on December 11, 1907, and by adjournment duly had on December 17, 1907, and by adjournment duly had on December 20, 1907, and by adjournment duly had on December 31, 1907, and by adjournment duly had again on December 31, 1907, and at all of said sessions Mr. Commissioner McCarroll presiding, and Abel E. Blackmar, Esq., Counsel to the Commission appearing for the Commission at the session of November 21, 1907, Adrian H. Larkin, Esq., appearing for the Richmond Light and Railroad Company, and at all of the other sessions Arthur DuBois, Esq., appearing for the Commission, and Adrian H. Larkin, Esq., appearing for the Richmond Light and Railroad Company, and proof having been taken at all of said sessions, except at the two sessions of December 31, 1907.

Now, it being made to appear after the proceedings upon said hearing that changes, improvements and additions in and to the regulations, equipment, appliances and service of the Richmond Light and Railroad Company in respect to the transportation of persons in the First District upon its various lines ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public, or of its employees, or in order to secure adequate service and facilities for the transportation of passengers, and it being made to appear that the changes, additions and improvements in regulations, equipment, appliances and service of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper, and ought reasonably to be made in order to promote the security and convenience of the public and employees.

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

Ordered,

1. That the service of the Richmond Light and Railroad Company, on its St. George to Elizabethtown Ferry line, be supplemented and changed as follows:

(a) That the schedules be so arranged that daily, except Sundays, not less than two (2) cars leave St. George within five minutes after the arrival of each ferry-boat from Manhattan, between the hours of 5 and 7 P. M., and run over the Richmond terrace, at least to the foot of Richmond avenue, Port Richmond. One of the cars must continue to the Elizabethtown ferry.

(b) That the Sunday schedules be so arranged that not less than forty-four (44) cars be run from St. George to Elizabethtown ferry over the Richmond terrace between the hours of 12 M. and 6 P. M.

2. That all cars signed to run to St. George or to the New York ferry at St. George be actually run over the elevated structure to the entrance of the ferry and not stopped at Jay street.

3. That the service of the Richmond Light and Railroad Company on its Castleton avenue line be supplemented and changed as follows:

(a) That the schedules be so arranged that daily, except Sundays, not less than two (2) cars leave St. George within five minutes after the arrival of each ferry boat from Manhattan, between the hours of 5 and 7 P. M., and run over the Castleton avenue route to Columbia street.

(b) That the schedules be so arranged that daily, except Sundays, not less than two (2) cars leave Columbia street and run over the Castleton avenue route to St. George to meet each boat leaving St. George between the hours of 7:45 and 8:45 A. M., both inclusive.

4. That the following additions and changes in equipment, with the exception of those stated in subdivision (b), be made and completed as soon as possible, but not later than May 15, 1908.

(a) That the company pass through the shops, making every required repair, all the present open car bodies, and all trucks and equipment, turning them out in as perfect condition as possible.

(b) That the company provide and equip all cars in service with two new automatic circuit breakers of sufficient capacity and modern type. This work on the closed cars is to be completed by November 1, 1908, and on all open cars by May 15, 1908.

(c) That the company provide and equip each of its cars in service with a gear case, for each motor thereon, and that each gear case shall at all times be maintained with sufficient gear grease to reduce the noise made by the gear and pinion, to a minimum. The gear case should preferably be maintained half full of grease.

(d) That the company provide and maintain, in good condition, on all of its cars in service, two head lights, of the type used upon the fifteen-bench open cars,

numbered 71 to 90, or light of equal power that will not project from the dash of the car further than those upon the fifteen-bench open cars numbered 71 to 90.

(e) That the company provide and maintain, in good condition, two sets of fenders, complete, upon each car in service.

(f) That the company provide and equip each car in service with proper lightning arrest equipment.

(g) That the company exercise care that trolley ropes are of sufficient length to permit of trolley wheel following the trolley wire at railway crossings.

(h) That no more overhead trolley wire of the size known No. 0 be erected, but that all new wire constructed and all repairs and replacing of old worn wire be made with No. 00 wire.

(i) That the company carefully examine all wooden poles and change those that show a dangerous condition from decay or other cause and reset all poles that have excessive lean.

(j) That the company overhaul all sections of track now in condition that cars cannot be operated at normal speed without severe oscillation, and make track suitable for satisfactory operation of fifteen-bench open cars. This refers particularly to all sections outside the paved streets.

(k) That the company exercise great care that all cars are properly equipped with sand box outfits and that they are at all times kept supplied with suitable sand; and it is further,

*Ordered*, That this order shall take effect on January 10, 1908, and shall continue in force for a period of two years from and after the date of its taking effect, but without prejudice to an order for further or additional hearings, and action thereon by the Commission in respect of anything herein prescribed, or in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years. And it is further

*Ordered*, That before January 10, 1908, the said Richmond Light and Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### South Brooklyn Railway Company and Nassau Electric Railroad Company.— Increase of service on Union street line.

In the Matter  
of the

Hearing on the motion of the Commission on the  
Question of Improvement in and Addition to  
the Service and Equipment of the SOUTH  
BROOKLYN RAILWAY COMPANY and the  
NASSAU ELECTRIC RAILROAD COMPANY,  
in respect to the Union Street Line.

ORDER No. 395.  
April 3, 1908.

*It is hereby ordered*, That a hearing be had on the 8th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time to which the same may be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city of New York, State of New York to inquire whether the regulations, equipment, appliances and service of the South Brooklyn Railway Company and the Nassau Electric Railroad Company, in respect to transportation of persons in the First District, are unjust, unreasonable, improper or inadequate, and whether the said companies run cars enough or with sufficient frequency, or possess or operate motive power enough reasonably to accommodate passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation and is and will be just, reasonable, proper and adequate to direct that the service of the said South Brooklyn Railway Company and said Nassau Electric Railroad Company on its Union Street line be increased and supplemented at the points and times and in the particulars following, that is to say:

#### A.— WESTBOUND.

Leaving Ninth avenue and Twentieth street and to run at least as far west as City Hall.

1. Between 6:40 and 7:10 A. M., by an increase of two cars, or by an increase from five to seven cars.

2. Between 7:10 and 7:40 A. M., by an increase of three cars, or by an increase from six to nine cars.

3. Between 7:40 and 8:10 A. M., by an increase of three cars, or by an increase from six to nine cars.

4. Between 8:10 and 8:40 A. M., by an increase of three cars, or by an increase from six to nine cars.

5. Between 8:40 and 9:10 A. M., by an increase of two cars, or by an increase from five to seven cars.

6. Between 9:10 and 9:40 A. M., by an increase of one car, or by an increase from four to five cars.

7. Between 7:10 and 7:40 P. M., by an increase of two cars, or by an increase from four to six cars.  
 8. Between 7:40 and 8:10 P. M., by an increase of one car, or by an increase from three to four cars.

**B.—EASTBOUND.**

- Leaving City Hall to Ninth avenue and Twentieth street.  
 9. Between 3:00 and 3:30 P. M., by an increase of two cars, or by an increase from three to five cars.  
 10. Between 3:30 and 4:00 P. M., by an increase of one car, or by an increase from four to five cars.  
 11. Between 4:00 and 4:30 P. M., by an increase of one car, or by an increase from four to five cars.  
 12. Between 4:30 and 5:00 P. M., by an increase of one car, or by an increase from four to five cars.  
 13. Between 5:00 and 5:30 P. M., by an increase of two cars, or by an increase from five to seven cars.  
 14. Between 5:30 and 6:00 P. M., by an increase of three cars, or by an increase from seven to ten cars.  
 15. Between 6:00 and 6:30 P. M., by an increase of three cars, or by an increase from eight to eleven cars.  
 16. Between 6:30 and 7:00 P. M., by an increase of three cars, or by an increase from six to nine cars.  
 17. Between 7:00 and 7:30 P. M., by an increase of one car, or by an increase from four to five cars.  
 18. Between 7:30 and 8:00 P. M., by an increase of one car, or by an increase from four to five cars.

**B.—HAMILTON FERRY SERVICE.**

19. Between 8:30 A. M. and 4:30 P. M., to provide a service of four cars an hour, between Court street and Hamilton ferry, the route to be the same as now operated during the rush hours.

20. Between 6:30 and 10:30 P. M., to provide a service of four cars an hour, as mentioned in item No. 19.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered*, That the said South Brooklyn Railway Company and the said Nassau Electric Railroad Company be given at least four days' notice of such hearing by service upon each of them, either personally or by mail, of a certified copy of this order, and that at such hearing said companies be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

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**Staten Island Railway Company.—Lack of passenger train service at Great Kills station.**

COMPLAINT OF H. A. RAYNES  
against

STATEN ISLAND RAILWAY COMPANY.

Complaint Order No. 282 (see form, note 1) issued February 21st.  
The matters complained of were satisfied by the company.

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**Staten Island Midland Railway Company.—Congested condition of Sunday service on the Concord-New Dorp line and the Concord-Port Richmond line.**

Complaint Order No. 785.  
Hearing Order No. 820.

COMPLAINT OF H. W. POPE  
against

STATEN ISLAND MIDLAND RAILWAY COMPANY.

Complaint Order No. 785 (see form, note 1) issued October 16th.  
Hearing Order No. 820 (see form, note 3) issued November 6th.  
Hearing held November 13th, 16th, December 21st and 28th.

Third Avenue Railroad Company.—Service on Third and Amsterdam avenue line.

Hearing Order No. 404.  
Opinion of Commissioner Maltbie.  
Final Order No. 424.  
Final Order No. 469.

In the Matter  
of the

Hearing on the motion of the Commission on the  
Question of Improvement in and Addition to the  
Service of the THIRD AVENUE RAILROAD  
COMPANY, and of Frederick W. Whitridge, as  
Receiver of said Company.

HEARING ORDER No. 404.  
April 7, 1908.

Third and Amsterdam Avenue Line.

*It is hereby Ordered*, That a hearing be had on the 16th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or time to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, in the borough of Manhattan, city and State of New York, to inquire whether the regulations, practices and service of the Third Avenue Railroad Company, or of Frederick W. Whitridge, as receiver of the Third Avenue Railroad Company, in respect to the transportation of persons in the First District on the Third avenue and Amsterdam avenue line, from the United States postoffice in Park row to the northern terminus of the line at or near One Hundred and Ninety-fifth street, are unreasonable, improper or inadequate, and whether the said Third Avenue Railroad Company, or the said Frederick W. Whitridge, as receiver of the Third Avenue Railroad Company, run cars enough or with sufficient frequency or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by them, or offered for transportation to them, and if such be found to be the fact then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Third Avenue Railroad Company, or of Frederick W. Whitridge, as receiver of the Third Avenue Railroad Company, be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily, including Sunday, over every point of the Third and Amsterdam avenue line, from the United States postoffice in Park Row to the northerly terminus of the line at or near One Hundred and Ninety-fifth street, either

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen minute period of the day or night a number of seats at least 10 per cent. in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six per hour in each direction, or

(b) A minimum number of 25 cars in one direction in each fifteen minute period in which the provisions of subdivision (a) above are not complied with.

2. By making such other and further changes in the schedule and manner of operating cars on the Third and Amsterdam avenue line between the United States postoffice in Park Row and the northerly terminus of the line at or near One Hundred and Ninety-fifth street as may be just and reasonable, and if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*It is further Ordered*, That the said Third Avenue Railroad Company and the said Frederick W. Whitridge, as receiver of the Third Avenue Railroad Company, be given at least five days' notice of said hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receiver be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held April 16th.

OPINION OF COMMISSION.

(Adopted April 17, 1908.)

COMMISSIONER MALTBIE:—

The Third and Amsterdam avenue line extends from Ann street and Broadway to Fort George via Park Row, the Bowery, Third avenue, One Hundred and

Twenty-fifth street, Manhattan street and Amsterdam avenue. Not all of the cars operated upon this line run between the two extreme termini; certain cars are regularly switched back at crossover points, which are so frequent as to permit of such routing as will most readily accommodate the traveling public.

North of Sixth street there is no limiting point upon the whole line, and sufficient cars may be run to give everyone a seat except under unusual conditions. At Grand street and the Bowery there are so many lines operating through this intersection, that it is physically impossible to increase materially the number of cars operated upon the Third avenue line without diminishing the cars operated upon the other lines. Hence, the number of cars below Sixth street may not be as great as the number in use above Sixth street.

The testimony presented at the hearings shows that it would probably be necessary to operate 25 cars in each 15-minute period for certain portions of the day below Sixth street if the passenger traffic were to be fully accommodated. But to do this would rob the other lines operating through Grand street and the Bowery. I, therefore, recommend that the Third avenue line be required to operate as a maximum only 12 cars in each 15-minute period south of Sixth street, and the order has been so drawn. The transportation bureau will continue its inspections and endeavor to work out some plan for a new routing of the cars or for a rearrangement of the traffic whereby the service may be still further increased upon the Third avenue line, as well as the other lines crossing the Bowery at Grand street.

There being no such limiting point above Sixth street, the company has been required to operate the usual 10 per cent. excess of seats over passengers; or, if unable to do so, at least 25 cars in every 15-minute interval. The evidence shows that if the order is complied with in spirit as well as in letter, the service will be greatly improved. At present the service is inadequate over most of the line and at times when there is no excuse for the crowding.

To comply with the provisions of the order, a larger number of cars will need to be used than have been operated heretofore. Mr. Maher, who is general manager of the line under Mr. Whitridge, the receiver, stated that with the cars that had been ordered and the open cars which could be used very shortly, there would be in his opinion a sufficient number to provide adequate service upon the line. He added that he was not absolutely certain of this and to definitely answer this question would require more investigation than he had yet made. Inasmuch as the receiver can ask for a modification of the order or a rehearing in case it is found that he does not have a sufficient number of cars, I recommend that the order be made effective May 1st, by which time some open cars can be used. If he should find that there are not enough cars to give adequate service, one of the first things which ought to be considered is the ordering of more cars. The public is entitled to them, and if they are not ordered, this matter will doubtless need to be considered under a further order.

The general principles involved in this order have been discussed in the opinion upon the improvement of service on the Twenty-third street line and need not be discussed here, although they apply with equal force.

Thereupon the following final order was issued:

**FINAL ORDER No. 424.**

April 17, 1908.

This matter coming on upon the report of the hearing had herein on April 16, 1908, and it appearing that the said hearing was held pursuant to Hearing Order 404 of this Commission, dated April 7, 1908, and returnable on April 16, 1908, at 2:30 P. M., and it appearing that said order was duly served upon said F. W. Whitridge as receiver of the Third Avenue Railroad Company on the 8th day of April, 1908, and that said Third Avenue Railroad Company had due notice of said hearing, and that said hearing was had by and before the Commission on the matters embraced in said order for a hearing on the 18th day of April, 1908, before Mr. Commissioner Multible, presiding; Albert H. Walker, Esq., appearing for the Commission; Edward A. Maher, Esq., appearing for said receiver, and proof having been taken upon said hearing, and it being made to appear after the proceedings on said hearing that the service of said railroad company and of

## 494 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

said F. W. Whitridge, as receiver of said company, in respect to the transportation of persons upon its Third avenue and Amsterdam avenue line in the city and State of New York, is unreasonable, improper and inadequate in that said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company do not operate cars enough upon said Third avenue and Amsterdam avenue line or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that it would be just, reasonable and proper that the said service of the said Third Avenue Railroad Company and F. W. Whitridge as receiver of said company be increased, supplemented and changed in the particulars hereinafter set forth:

Therefore, On motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered* as follows:

1. That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company be, and they hereby are, directed and required to operate daily, including Sunday, over every point of the Third avenue and Amsterdam avenue line from the United States post-office in Park row to the northerly terminus of the line at or near One Hundred and Ninety-fifth street, either:

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a number of seats at least 10 per cent. in excess of the number of passengers at that point, the number of cars passing any point to be, however, never less than six per hour in each direction, or

(b) Over that portion of the above described line south of Sixth street a minimum number of twelve cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with; and over that portion of the line above described north from Sixth street a minimum number of twenty-five cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with.

2. That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company be, and they hereby are, directed and required to institute such changes, improvements and additions by or for the 1st day of May, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. *It is further ordered*, That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company, notify the Public Service Commission for the First District within five days after service of this order upon them whether the terms of this order are accepted and will be obeyed.

### ORDER No. 469. AMENDING FINAL ORDER No. 424.

May 8, 1908.

An order, known as Order No. 424, having been duly made by the Commission on the 17th day of April, 1908, and F. W. Whitridge, receiver of the Third Avenue Railroad Company, having thereafter objected to the recital therein as follows, "Edward A. Maher, Esq., appearing for said receiver," on the ground that from such recital the inference might be drawn that said Edward A. Maher appeared on behalf of said receiver, the fact being that he attended at the request of the Commission, it is

*Ordered*, That said Order No. 424 be, and the same hereby is amended ~~now~~ ~~pro tem~~ as of the 17th day of April, 1908, by striking out the words, "Edward A. Maher, Esq., appearing for said receiver," and inserting instead the words, "Edward A. Maher, General Manager of the Third Avenue Railroad Company, for its receiver, attending, at the request of the Commission," so that said order as amended shall read as follows:

### FINAL ORDER No. 424.

This matter coming on upon the report of the hearing had herein on April 16, 1908, and it appearing that the said hearing was held pursuant to Hearing Order 404 of this Commission, dated April 7, 1908, and returnable on April 16, 1908, at 2:30 P. M., and it appearing that said order was duly served upon said F. W. Whitridge, as receiver of the Third Avenue Railroad Company on the 8th day of April, 1908, and that said Third Avenue Railroad Company had due notice of said hearing, and that said hearing was had by and before the Commission on the matters embraced in said order for hearing on the 16th day of April, 1908, before Mr. Commissioner Maltbie, presiding; Albert H. Walker, Esq., appearing for the Commission; Edward A. Maher, General Manager of the Third Avenue Railroad Company, for its receiver attending, at the request of the Commission, and proof having been taken upon said hearing, and it being made to appear after the proceedings on said hearing that the service of said railroad company and of said F. W. Whitridge, as receiver of said company, in respect to the transportation of persons upon its Third avenue and Amsterdam avenue line in the city and State of New York, is unreasonable, Improper and inadequate in that said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company, do not operate cars enough upon said Third avenue and Amsterdam avenue line or with sufficient frequency, or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transporta-

tion to them, and it appearing that it would be just, reasonable and proper that said service of the said Third Avenue Railroad Company and F. W. Whitridge, as receiver of said company be increased, supplemented and changed in the particulars hereinafter set forth:

Therefore, On motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered* as follows:

1. That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company be, and they hereby are, directed and required to operate daily, including Sunday, over every point of the Third avenue and Amsterdam avenue line from the United States post-office in Park row to the northerly terminus of the line at or near One Hundred and Ninety-fifth street, either:

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a number of seats at least 10 per cent. in excess of the number of passengers at that point, the number of cars passing any point to be, however, never less than six per hour in each direction; or

(b) Over that portion of the above described line south of Sixth street a minimum number of twelve cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) above are not complied with; and over that portion of the line above described north from Sixth street a minimum number of twenty-five cars in one direction in each fifteen-minute period in which the provisions of subdivision (a) are not complied with.

2. That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company be, and they hereby are, directed and required to institute such changes, improvements and additions by or before the 1st day of May, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. It is further ordered, That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company, notify the Public Service Commission for the First District within five days after service of this order upon them whether the terms of this order are accepted and will be obeyed.

### Third Avenue Railroad Company.—Service on Kingsbridge surface line.

Hearing Order No. 435.

Opinion of Commissioner Maltbie.

Final Order No. 536.

In the Matter  
of the

Hearing on the motion of the Commission on the question of Improvements in and Addition to the Service of the THIRD AVENUE RAILROAD COMPANY and of FREDERICK W. WHITRIDGE, as receiver of said company.

ORDER FOR HEARING  
No. 435.  
April 24, 1908.

"Kingsbridge Surface Line."

. It is hereby ordered, That a hearing be had on the 8th day of May, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the Third Avenue Railroad Company, or of Frederick W. Whitridge, as receiver of the said Third Avenue Railroad Company, in respect to transportation of persons in the First District on the Kingsbridge surface line, are unreasonable, improper or inadequate, and whether the said Third Avenue Railroad Company, or the said Frederick W. Whitridge, as receiver of the said Third Avenue Railroad Company, run cars enough or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate passenger traffic transported by them or offered for transportation to them, and if such be found to be the fact then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Third Avenue Railroad Company, or of Frederick W. Whitridge, its receiver, on the Kingsbridge surface line, be increased, supplemented and changed in the following manner, that is to say:

1. By routing cars from One hundred and Twenty-fifth street and East river to the northerly terminus of the line instead of from One Hundred and Twenty-fifth street and Eighth avenue as at present.

2. By operating daily, including Sundays, except between the hours of 2 A. M. and 5 A. M., over every point of the Kingsbridge line, between One Hundred and Twenty-fifth street and East river and the northerly terminus of the line a sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than six (6) per hour in each direction except between the hours of 2 A. M. and 5 A. M.

3. By making such other and further changes in the schedule and manner of operating cars on the Kingsbridge surface line, between One Hundred and Twenty-fifth street and East river and the northerly terminus of the line as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Third Avenue Railroad Company, and Frederick W. Whitridge, as receiver of the Third Avenue Railroad Company, be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company and its receiver be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held May 6th, 12th and 19th.

OPINION OF COMMISSION.

(Adopted May 29, 1908.)

COMMISSIONER MALTBIE:—

The question of the adequacy of service upon the Kingsbridge surface line has been before the Commission for some time and several inspections have been made by the Transportation Bureau. When the matter was first taken up it was found that the New York City Railway Company was using the line for the experimental running of the pay-as-you-enter cars, which were to be used upon the Madison avenue line. Owing to the lack of adequate facilities at the Kingsbridge car barn and the delays due to the breaking in of the pay-as-you-enter cars, the service on the Kingsbridge line was very much interrupted, but in order that the cars should be working smoothly when they were placed upon the Madison avenue line, it seemed necessary that the motormen should be taught how to handle them and that the cars should be broken in before they were actually put into use. Consequently, no order was issued at that time.

After the pay-as-you-enter cars were taken off the line, observations were continued and an order for a hearing was issued, hearings duly held and evidence taken. At these hearings residents of this portion of the city appeared and complained regarding the inadequacy of the service at certain hours and the irregularity with which the cars were operated. Evidence was also presented by the inspectors of the Commission.

When our observations were first undertaken the Kingsbridge line extended from One Hundred and Twenty-fifth street and Eighth avenue westerly over One Hundred and Twenty-fifth street, Manhattan street, Amsterdam avenue and Broadway to the Harlem Ship Canal. It seemed clear at the very beginning that the service would be greatly improved if the southerly terminus of the line were changed from One Hundred and Twenty-fifth street and Eighth avenue to First avenue and One Hundred and Twenty-fifth street. This change was suggested to the company some time ago, was soon adopted by them and since it has been in operation has been found to work with great satisfaction to the public and to the company.

The evidence taken at the hearings shows that the service is adequate most of the time, except that it is very irregular and that upon Saturdays, Sundays and holidays the number of cars run is not sufficiently increased to handle the crowds which go to that section of the city for recreation.

I have directed, therefore, that an order be prepared which shall not require that a uniform schedule be maintained throughout the week and upon Sundays, but that an elastic standard be fixed which will allow the company to operate few cars when few cars are needed and yet will require the company to operate a larger number when the demands make their operation necessary. The inspectors

have noted that the times of maximum demand recur with considerable regularity, and it will be possible for the manager, by using the ordinary means of observation, to anticipate the demands and operate sufficient cars to adequately handle the traffic. As regards regularity, there is opportunity for great improvement.

Thereupon the following final order was issued:

FINAL ORDER No. 536.

May 29, 1908.

This matter coming on upon the report of the hearing had herein on the 6th day of May, the 12th day of May and the 19th day of May, 1908, and it appearing that the said hearing was held pursuant to hearing order No. 435 of this Commission, dated April 24, 1908, and returnable on May 6, 1908, at 3 P. M., and it appearing that said order was duly served upon said Third Avenue Railroad Company and upon said F. W. Whitridge, as receiver of said company, and that said hearing was had by and before the Commission on the matters embraced in said order for hearing on the 6th, 12th and 19th days of May, 1908, before Mr. Commissioner Maltbie, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission and no one appearing for said Third Avenue Railroad Company or for said receiver, and proof having been taken upon said hearing and it being made to appear after the proceedings on said hearing that the service of said Third Avenue Railroad Company and of said F. W. Whitridge, as receiver of said company in respect to the transportation of persons upon its line known as the Kingsbridge Surface Line in the City and State of New York, are unreasonable, improper and inadequate in that said Third Avenue Railroad Company and said F. W. Whitridge as receiver of said company, do not operate cars enough upon said line or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and it appearing that it would be just, reasonable and proper that the said service of the said Third Avenue Railroad Company and of F. W. Whitridge, as receiver of said company, be increased, supplemented and changed in the particulars hereinafter set forth.

Therefore, on motion of George S. Coleman, counsel to the Commission, it is

*Ordered* as follows:

1. That said Third Avenue Railroad Company and said F. W. Whitbridge, as received of said company, be and they hereby are directed and required to route cars from One Hundred and Twenty-fifth street and East river to the northerly terminus of said line instead of from One Hundred and Twenty-fifth street and Eighth avenue.

2. That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company, be and they hereby are directed and required to operate daily including Sundays except between the hours of 2 A. M. and 5 A. M. over every point of said Kingsbridge line between One Hundred and Twenty-fifth street and East river and the northerly terminus of the line, a sufficient number of cars in each direction past any point of observation to provide during every fifteen (15) minute period of the day and night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point, the number of cars passing any point to be, however, never less than six (6) in each direction except between the hours of 2 A. M. and 5 A. M.

3. That said Third Avenue Railroad Company and said F. W. Whitridge, as receiver of said company, be and they hereby are directed and required to institute said changes, improvements and additions by or before the tenth day of June, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

4. It is further Ordered, That said Third Avenue Railroad Company and said F. W. Whitridge as receiver of said company notify the Public Service Commission for the First District within five (5) days' after service of this order upon them whether the terms of this order are accepted and will be obeyed.

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Union Railway Company.—Service on Jerome avenue line to  
Woodlawn.

GEORGE A. DENHOLM and GEORGE W. M.  
CLARK,  
*Complainants,*  
against  
UNION RAILWAY COMPANY,  
*Defendant.*

Under order for hearing No. 170, made December  
27, 1907.

FINAL ORDER No. 243.  
February 7, 1908.

This matter coming on upon the complaints of George A. Denholm and George W. M. Clark, dated November 23, 1907, and November 18, 1907, respectively, and the an-

swer thereto of Union Railway Company bearing date the 14th day of December, 1907, and the report of the hearing had herein on January 7, 1908, and January 14, 1908, and it appearing that said hearing was held by and pursuant to an order of the Commission No. 170, made and entered the 27th day of December, 1907, and returnable on the 7th day of January, 1908, and that said order for hearing was duly served upon said Union Railway Company and that said hearing was held by and before said Commission on the matters in said complaint, said answer and said order specified, on the 7th day of January, 1908, and by adjournment duly had to the 14th day of January, 1908, Mr. Commissioner Eustis presiding, and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission, and Ambrose F. McCabe, Esq., appearing for the railway company, at each of said sessions, and evidence being taken,

Now, it being made to appear after the proceedings on the said hearing that the service of the Union Railway Company is unreasonable and inadequate in that said company does not operate cars enough north of Woodlawn Gate, on its Jerome avenue line, and does not operate cars with sufficient regularity on said line reasonably to accommodate the passenger traffic transported by said company or offered for transportation to it, at the times hereinafter specified, and it appearing that it would be just, reasonable and proper that the service of said Union Railway Company, on its Jerome avenue line, should be supplemented in the particulars hereinafter set forth, at the points and at the times hereinafter set forth,

*Therefore*, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is Ordered*, That the said Union Railway Company increase its service upon its Jerome avenue line so that said company shall operate through cars between One Hundred and Fifty-fifth street and the city line at Jerome avenue, as follows:

1. With a headway of not more than four (4) minutes between cars leaving the city line, southbound, on Jerome avenue, between 6:30 and 9:00 A. M., daily except Sundays.

2. With a headway of not more than four (4) minutes between cars leaving One Hundred and Fifty-fifth street, northbound, between 4:30 and 7 P. M., daily except Sundays.

3. With a headway of not more than twenty (20) minutes between cars leaving the city line, southbound on Jerome avenue, between 1 and 5 A. M. daily.

4. At all other times with a headway of not more than eight (8) minutes between cars leaving the city line, southbound.

*And it is further ordered*, That this order shall take effect on the 10th day of February, 1908, and shall remain in force until modified by further order of this Commission.

*And it is further ordered*, That paragraphs numbered (1) and (2) of Order No. 107 of this Commission, made the 22d day of November, 1907, be, and the same hereby are, rescinded and abrogated, said Order No. 107 to remain in full force and effect except as to said paragraphs numbered (1) and (2);

*And it is further ordered*, That within five (5) days from and after the service of this order the said Union Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

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**Union Railway Company.—Failure to operate cars between 1 a. m. and 5 a. m. on a twenty minute headway.**

COMPLAINT OF FRANK J. FLYNN

against

UNION RAILWAY COMPANY AND FREDERICK W. WHITRIDGE, its Receiver.

Complaint Order No. 517 (see form, note 1) issued May 22d.

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**Union Railway Company.—Inadequate service on Fort Schuyler road, Westchester village to the Eastern boulevard, and proposed extension of line on Eastern boulevard.**

Complaint Order No. 323.  
Hearing Order No. 368.  
Final Order No. 474.  
Extension Order No. 580.  
Extension Order No. 631.  
Opinion of Counsel.  
Rehearing Order No. 789.  
Final Order No. 827.

## COMPLAINT OF WILLIAM HENDERSON AND OTHERS

against

UNION RAILWAY COMPANY AND FREDERICK W. WHITRIDGE, its Receiver.

Complaint Order No. 323 (see form, note 1) issued March 10th.

Hearing Order No. 368 (see form, note 3) issued March 27th.

Hearings were held April 8th and 15th.

The following final order was issued:

**WILLIAM HENDERSON and One Hundred and  
Fifty Others,** *Complainants,*  
*against*

**UNION RAILWAY COMPANY and FREDERICK  
W. WHITRIDGE, as Receiver of said Company,**  
*Defendant.*

FINAL ORDER, No. 474.  
May 8, 1908.

"Inadequate service on Fort Schuyler Road,  
Westchester Village to Eastern Boulevard, and  
proposed extension of line on Eastern Boulevard."

After Hearing Order No. 368, dated March 27, 1908.

This matter coming on upon the report of the hearing had herein on the 8th day of April, 1908, and on the 15th day of April, 1908, and it appearing that the said hearing was had by and before the Commission pursuant to Hearing Order No. 368, issued upon the complaint and answer herein and returnable on the 8th day of April, 1908, at 3:30 p. m., and it appearing that said order was duly served upon said Union Railway Company, and that such service was by it duly acknowledged, and that said hearing was had by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on the 8th day of April, 1908, and on the 15th day of April, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission, and M. S. Borland, Esq., of Messrs. Bowers & Sands, attorney, appearing for said Union Railway Company and for Frederick W. Whitridge, as receiver of said company, and it having been made to appear after the proceedings on said hearing that said Union Railway Company and said Frederick W. Whitridge, as receivers of said company, have done or omitted to do certain acts which are in violation of some provision of law or of the terms and conditions of the franchise or charter of said company, in failing to extend its line from the present terminus of its line on Fort Schuyler road at the intersection of Fort Schuyler road and Eastern boulevard, along Eastern boulevard and the Town Dock road to Long Island Sound, said route being designated in the franchise of said company in the following language: "thence along said (Eastern) boulevard to the new road to Long Island Sound and thence along said new road to Long Island Sound," and it having been made to appear after the proceedings on said hearing that it would be just, reasonable and proper to require the said Union Railway Company and said Frederick W. Whitridge, as receiver of said company, to extend and operate its said line from the present terminus thereof on said Fort Schuyler road as aforesaid, along Eastern boulevard up to the point where the Town Dock road intersects said Eastern boulevard, and as far as the franchise of said company extends on said Eastern boulevard; and it having been made to appear that such addition ought reasonably to be made to said line in order to promote the convenience of the public; and it having been made to appear after the proceedings on said hearing that the service of said Union Railway Company and of Frederick W. Whitridge, as receiver of said company, in respect to the transportation of persons upon their line upon said Fort Schuyler road is unreasonable, improper and inadequate, in that said company and said Frederick W. Whitridge, as receiver of said company, do not operate cars enough upon said line or with sufficient frequency or upon a reasonable time schedule reasonably to accommodate the passenger traffic transported by them or offered for transportation to them, and that it would be just, reasonable and proper that the said service of said Union Railway Company and of Frederick W. Whitridge, as receiver of said company, be increased, supplemented and changed in the particulars hereinafter set forth:

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered,*

1. That said Union Railway Company and said Frederick W. Whitridge, as receiver of said company, be and they hereby are directed and required to ex-

500 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

tend their said line from the easterly terminus of said line on Fort Schuyler road at the intersection of said road with Eastern boulevard, along said Eastern boulevard up to the point where said Town Dock road intersects said Eastern boulevard, and as far as the franchise rights of the said company extend on Eastern boulevard, and to build and equip such extension in a suitable and proper manner for the operation of said line and with such switches or turnouts as may be required to enable said company and its said receiver to give adequate service upon said Eastern boulevard and upon said Fort Schuyler road.

*2. It is further ordered,* That said Union Railway Company and said Frederick W. Whltridge, as receiver of said company, be and they hereby are directed and required to operate daily, including Sunday, over every point of said line on said Fort Schuyler road and every point of said line on Eastern boulevard when completed, either:

(a) A sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day and night between the hours of 6:30 A. M. and 1:45 A. M., at least a seat for every passenger; the number of cars passing any point in each direction to be, however, never less than eight (8) cars per hour between 6:30 A. M. and 9 A. M., and between 3:30 P. M. and 8 P. M., and never less than four (4) cars per hour in each direction between 9 A. M. and 3:30 P. M., and between 8 P. M. and 1:45 A. M.; or

(b) A minimum of fifteen (15) cars in each direction in each thirty-minute period in which the provisions of subdivision (a) above are not complied with.

*3. It is further ordered,* That said Union Railway Company and said Frederick W. Whltridge, as receiver of said company, be and they hereby are directed and required to complete said extension of said line on said Eastern boulevard, and to begin the operation of cars thereon not later than the 15th day of June, 1908, and to institute said improvements, changes and additions to and in the operation of its cars on said Fort Schuyler road and Eastern boulevard not later than the 15th day of June, 1908.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

4. This order shall be without prejudice to the right of the Commission to make such further or other order or orders regarding any such further extension or extensions of said line on said Town Dock road as may to the Commission seem just and reasonable.

*5. It is further ordered,* That the said Union Railway Company and said Frederick W. Whltridge, as receiver of said company, notify the Public Service Commission for the First District within five days after service of this order upon them whether the terms of this order are accepted and will be obeyed.

Upon applications of the company the following extension orders were issued:

EXTENSION ORDER No. 580.

June 16, 1908.

An order, No. 474, having been made herein on or about the 8th day of May, 1908, ordering and directing the Union Railway Company and Frederick W. Whltridge, its receiver, to extend their line from the easterly terminus of said line on Fort Schuyler road at the intersection of said road with Eastern boulevard up to the point where said Town Dock road intersects said Eastern boulevard, and as far as the franchise rights of the said company extend on Eastern boulevard, and to complete said extension and begin the operation of cars thereon not later than the 15th day of June, 1908; and the said Union Railway Company and Frederick W. Whltridge, its receiver, having, on June 13, 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered,* That the time within which the Union Railway Company and its receiver, Frederick W. Whltridge, shall complete the construction of the extension to its road herein mentioned be, and the same hereby is, extended to and including the 15th day of July, 1908.

EXTENSION ORDER No. 631.

July 10, 1908.

An order, No. 474, having been made herein on or about the 8th day of May, 1908, ordering and directing the Union Railway Company and Frederick W. Whltridge, as receiver, to extend their line from the easterly terminus of said line on Fort Schuyler road at the intersection of said road with Eastern boulevard up to the point where said Town Dock road intersects said Eastern boulevard and as far as the franchise rights of the said company extend on Eastern boulevard, and to complete said extension and begin the operation of cars thereon not later than the 15th day of June, 1908; and the said Union Railway Company and Frederick W. Whltridge, its receiver, having on June 13, 1908, applied in writing for an extension of such time until July 15, 1908, and an Extension Order, No. 580, having been made thereon on or about the 16th day of June, 1908, and a report having been made by Harry P. Nichols, Engineer in Charge, of the Division of Franchises, to Nelson P. Lewis, Chief Engineer of the Board of Estimate and Apportionment, which questioned the right of said Union Railway Company, and its receiver, to construct said extension, and the matter hav-

ing been transmitted to the Corporation Counsel for his opinion as to whether the Public Service Commission of the First District had authority to issue the order in question and several other questions in connection with the franchise rights of the said company in respect to the extension of the Fort Schuyler road line,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Union Railway Company and its receiver, Frederick W. Whitridge, shall complete the construction of the extension to its road herein mentioned be, and the same hereby is, extended until thirty days after the Corporation Counsel renders an opinion in the matter.

## OPINION OF COUNSEL.

August 12, 1908.

**HON. JOHN E. EUSTIS, Commissioner:**

SIR.—I am in receipt of your letter of June 17th transmitting a copy of a report submitted by Harry P. Nichols, engineer in charge of the division of franchises for the Board of Estimate and Apportionment, to the Board of Estimate and Apportionment, relating to the franchises of the Union Railway on the Eastern boulevard from Fort Schuyler road to New Town Dock road, and raising several questions in regard to same. You state that as the matter has been sent to the corporation counsel for an opinion, you would like an opinion from me in regard thereto.

On the 8th day of May, 1908, the Commission issued find order No. 474 directing the Union Railway Company and F. W. Whitridge as receiver of said company to extend their line on Fort Schuyler road from the easterly terminus of the line at the intersection of this road with the Eastern boulevard, northerly along said Eastern boulevard up to the point where the Town Dock road intersects said Eastern boulevard and as far as the franchise rights of said company extend on Eastern boulevard.

This order was made after a hearing upon complaint and answer. The complaint asked that the company be required to extend the line northerly from the intersection of Fort Schuyler road and Eastern boulevard along Eastern boulevard to Pelham Bay park. It was claimed by the company in the answer and upon the hearing that the company had a franchise over certain streets including Fort Schuyler road and a portion of Eastern boulevard and the "new road to Long Island Sound" by virtue of a grant of the town of Westchester to the Wakefield and Westchester Traction Company. It seems to be the fact that whatever rights the Union Railway Company has on Eastern boulevard it possesses as the successor of the Wakefield and Westchester Traction Company under the consent thus granted by the town of Westchester.

The Wakefield and Westchester Traction Company was incorporated in 1892 by certificate of incorporation dated April 24, 1892, and filed in the office of the Secretary of State on April 28, 1892. In the certificate of incorporation the termini of the road are stated to be

"(1) The intersection of Fifteenth avenue and Third street in the village of Williamsbridge; (2) the junction of Long Island Sound with the new road between the Eastern boulevard and said Long Island Sound."

On June 7, 1892, the Town Board of the town of Westchester adopted a resolution granting to this company the right to build and operate a street surface railroad along certain streets, roads and highways, as follows:

"Beginning at Fifteenth avenue and Third street in the village of Williamsbridge; thence along said Third street to White Plains road; thence along said White Plains road to Briggs avenue; thence along said Briggs avenue to the old Boston road; thence along said Boston road to the road leading from Williamsbridge to Westchester village; thence along said road to Main street in Westchester village; thence along said Main street to the road to Fort Schuyler; thence along said road to the Eastern boulevard; thence along said boulevard to the new road to Long Island Sound; and thence along said new road to Long Island Sound."

This company was one of five different companies which were incorporated at the same time, to all of which companies franchises were granted by the Town Board of the town of Westchester on June 7, 1892.

On May 12, 1904, these companies were consolidated into the Bronx Traction Company. The consolidation agreement recites that each of the constituent companies "is the owner of one or more municipal consents and franchise rights to construct, maintain and operate a street surface railroad in and upon various streets in the borough of the Bronx in the city of New York, and the railroads of two or more of the said corporations have been actually constructed and are now in operation on part of the streets, avenues, and roads designated in the street franchises owned by said corporations respectively \* \* \*." It does not appear by what corporations the construction work had been done.

The capital stock is fixed at \$585,000, "the exact equivalent of the total capital stock of the five corporations hereby consolidated at the par value thereof." The capital stock of the Wakefield Company was \$125,000.

On November 2, 1904, an operating agreement was entered into between the Bronx Traction Company and the Union Railway Company whereby the Union Railway Company has the use of the tracks of the Traction Company "now constructed or to be constructed." But the Union Railway Company does not under

this agreement agree to extend the tracks of the Bronx Traction Company or to perform any of its obligations so far as the extension of tracks is concerned. After the consolidation above mentioned construction under the franchises of the Bronx Traction Company was continued. The line along Fort Schuyler road was opened in 1904.

Mr. Nichols states that the consent to the Wakefield and Westchester Traction Company was granted by the Town Board of Auditors of the town of Westchester, and the first question he raises is as to whether the consent thus granted vested in the Wakefield and Westchester Traction Company a valid franchise, the Town Board of the town being at that time the proper franchise granting authority. I think Mr. Nichols must be in error in stating that the consent was granted by the Town Board of Auditors, as the documents filed with the franchise department of the Commission show that the consent was granted by the Town Board. There can therefore be no doubt that the Wakefield Company had a valid franchise over the route described in the consent.

The Bronx Traction Company succeeded to that franchise provided the franchise had not been forfeited prior to the consolidation. As to whether or not it had been forfeited a serious question is presented.

Section 5 of the Railroad Law at the time of the incorporation of the Wakefield and Westchester Traction Company provided as follows:

"If any domestic railroad corporation shall not, within five years after its certificate of incorporation is filed, begin the construction of its road and expend thereon ten percentum of the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing such certificate, its corporate existence and powers shall cease."

This section has been held to be applicable to street railroad corporations and to be self executing. The existence of the corporation is terminated by failure to comply with either of the prescribed conditions.

Matter of Brooklyn, Winfield and Newtown Ry. Co., 72 N. Y. 245.  
Matter of Brooklyn, Winfield and Newtown Ry. Co., 75 N. Y. 335.  
(See) Brooklyn Steam Transit Co. v. City of Brooklyn, 78 N. Y. 524.

I have been unable to ascertain just when the construction of this company's line was commenced. It is very doubtful whether it was commenced within the time prescribed by the statute or whether the required amount of capital was expended within that time. This company, though organized in 1892, never made any report to the State Board of Railroad Commissioners. The company was merged in the Bronx Traction Company in 1904. The first report showing any construction was made by the Bronx Traction Company in 1904. It would therefore appear extremely unlikely that the condition mentioned was complied with within the five years mentioned in the statute. The Franchise Department has made a study of the subject, but has been unable to reach any definite conclusion.

Whatever the decision may be upon the point just mentioned, it is certain that the line was not completed within the ten years prescribed by the statute for the completion of the line, for more than sixteen years have elapsed since the filing of the certificates of incorporation and the line has been constructed no farther than the intersection of Fort Schuyler road and Eastern boulevard. It would appear, therefore, that the company's franchise has been forfeited unless the time for construction has been extended in some way. I know of no way whereby the time for the construction could have been extended except under an amendment to section 5 of the Railroad Law.

In 1901 section 5 of the Railroad Law was amended by the addition of the following:

"This section shall not apply to any street surface railroad company incorporated prior to July first, eighteen hundred and ninety-five, which has obtained or become the owner of the consents of the local authorities, of any city of the first or second class, given under article four of the railroad law to the use of the public streets, avenues, or highways for the construction and operation of the railroad thereon."

I am of the opinion that this amendment could have no application to the Wakefield and Westchester Traction Company as the consents it had were those of the local authorities of a town and not those of the local authorities of the city of the first or second class. This amendment, therefore, cannot save the company's franchise from forfeiture.

If, as seems to be the case, the franchise rights of the Wakefield and Westchester Traction Company have been forfeited, it would seem unnecessary to pass upon the remaining questions raised by Mr. Nichols. However, they will be noticed briefly.

Mr. Nichols raises a question as to the location of the road designated in the consent of the town of Westchester as the "new road to Long Island Sound." The order of the Commission assumes that the road intended is the Town Dock road which intersects Eastern boulevard at a point north of the intersection of Fort Schuyler road with Eastern boulevard. Mr. Nichols is of the opinion, however, that the road referred to is Ferris avenue or Ferry Point road, which lies to the south of the intersection of Fort Schuyler road and Eastern boulevard. If this interpretation is correct, the Wakefield and Westchester Traction Company never had any franchise rights on Eastern boulevard north of the intersection of Fort Schuyler road therewith.

The language used is very ambiguous. It was claimed by the Union Railway Company in its answer and upon the hearing that it had no franchise rights on

**Eastern** boulevard north of the intersection of Fort Schuyler road and Eastern boulevard and that by "the new road to Long Island Sound" was meant Ferris avenue or Ferry Point road. However, upon the hearing, Mr. Edward A. Maher, until recently President of the Union Railway Company, admitted that the road intended was the New Dock road (or Town Dock road) above mentioned. It having been thus admitted that the company had franchise rights over a portion of Eastern boulevard north of the intersection of Fort Schuyler road and Eastern boulevard, the Commission accepted the company's statement and issued its order accordingly.

It is impossible to determine from the maps and documents filed with the Commission which interpretation is correct. A map filed by the Union Railway Company with the Franchise Department of the Commission shows the route as extending through Ferris avenue. I am of the opinion, however, that the road referred to is the Town Dock road. The consent of the town of Westchester describes the line as extending "to Long Island Sound;" and the certificate of incorporation of the Wakefield and Westchester Traction Company describes the terminus of the line as the "junction of Long Island Sound with the new road between the Eastern boulevard and said Long Island Sound." Several maps prepared at different times by the authorities of the borough of the Bronx are on file with the Franchise Department of the Commission. On all these maps the Town Dock road is shown as extending to the Sound, whereas Ferris avenue or Ferry Point road is shown as extending only part way to the Sound. There could therefore be no "junction" between this road and the Sound. However, it is a matter of what was intended at the time, and in the absence of any knowledge as to what the intent was, no definite determination can be reached.

Mr. Nichols inquires whether the company's interpretation of the franchise in regard to the streets or roads on which it was granted evidenced by the maps furnished by the Union Railway Company, precludes it from claiming the right to construct in a different direction on the same street, when the description of the route contained in the consent may be considered ambiguous.

I am of the opinion that any ambiguity may be cleared up and the actual intent may be ascertained. The company's interpretation may be taken for what it is worth, but is not conclusive. Resort may be had to extrinsic circumstances.

Smith v. Helmer, 7 Barb. 415.  
Union Pac. R. R. Co. v. Hall et al., 91 U. S., 343, 351.

Mr. Nichols seems to be of the opinion that the order of the Public Service Commission should have been directed to the Bronx Traction Company instead of the Union Railway Company. In this I think he is right. As has been noted, the Union Railway Company has the use of the tracks of the Bronx Traction Company under an agreement with that company, but there is nothing in that agreement whereby the Union Railway Company undertakes to extend the tracks of the Bronx Traction Company or to perform any of its obligations so far as the extension of tracks is concerned. If there is any agreement between these companies whereby the Union Railway Company obligates itself to extend the tracks of the Bronx Traction Company, it has not been filed with the Commission.

Mr. Nichols seems to be in doubt whether the Commission has power to make an order requiring a company to utilize its entire franchise where it is using only a part thereof. The decisions of the courts upon this point leave little room for doubt. It is held that a railroad company need not accept a franchise unless it chooses to do so, but that if it accepts the franchise it must take it as offered, and the company has no right to accept in part and reject in part. The company owes a duty to the public to exercise the entire franchise granted to it. The franchise can only be legally exercised by the company operating its entire road. There is no privilege granted or right obtained to operate a part thereof; and if it undertakes to do so it is exercising a franchise or privilege without legal sanction.

The People vs. The Albany and Vermont Railroad Company, 24 N. Y. 261.  
Matter of Metropolitan Transit Company, 111 N. Y. 588.  
Union Pacific R. R. Co. vs. Hall et al., 91 U. S. 343.  
Palge vs. Schenectady Ry. Co., 178 N. Y. 102, 114.  
Collins vs. Amsterdam St. R. R. Co., 76 App. Div. 249.  
Goelst vs. Metropolitan Transit Co., 48 Hun. 520.

And it seems that mandamus will lie to compel a railroad company which is exercising a part of its franchise to exercise its entire franchise.

The People vs. The Albany and Vermont Railroad Company, 24 N. Y. 261.  
Union Pacific R. R. Co. vs. Hall et al., 91 U. S. 343.

The failure of the company to exercise its entire franchise being thus a violation of law and of the terms and conditions of its franchise, the Commission has power under section 48 of the Public Service Commissions Law to make an order requiring the company to exercise its entire franchise, and may enforce its order by mandamus.

Public Service Commissions Law, § 48.  
Public Service Commissions Law, § 57.

My conclusions therefore are:

1. The consent of the town of Westchester to the Wakefield and Westchester Traction Company in 1892 vested in that company a valid franchise over the route described in the consent.
2. Upon the consolidation of this company and other companies into the Bronx Traction Company in 1904, the Bronx Traction Company succeeded to the rights of

## 504 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

the Wakefield and Westchester Traction Company provided those rights had not been forfeited under section 5 of the Railroad Law. Apparently, however, these rights had been forfeited.

3. If these rights have not been forfeited, the Commission has power to make an order requiring the Bronx Traction Company to extend its line over the entire route described in the consent above mentioned, or requiring the Union Railway Company to extend the line if that company has become obligated in any way to extend the same.

4. The order of the Commission in this case was directed to the Union Railway Company which operates its cars over the tracks of the Bronx Traction Company under an agreement for the use of the tracks. As the Union Railway Company does not under the terms of this agreement undertake to extend the tracks of the Bronx Traction Company, apparently the order should have been directed to the Bronx Traction Company.

5. The language used in the consent of the town of Westchester in describing the streets through which the road should extend after leaving the junction of Fort Schuyler road and Eastern boulevard is so ambiguous that it is impossible to determine the direction intended.

I would recommend that an investigation be had in order to determine

1. Whether the rights granted by the town of Westchester to the Wakefield and Westchester Traction Company have been forfeited.

2. If such rights have not been forfeited, then to determine over what streets such rights extend.

3. Whether there is any agreement between the Bronx Traction Company and the Union Railway Company whereby the latter is obligated to extend the lines of the Bronx Traction Company.

4. Whether any of the franchises of the Bronx Traction Company are still valid and subsisting.

A general investigation of the franchises of this Company would enable the Commission to get at the facts and determine what course to pursue. As matters now stand orders of the Commission affecting the lines of this company are likely to be rendered nugatory by the action of the city in claiming that there is no franchise and refusing to permit the company to execute these orders.

Respectfully yours,

(Signed) GEO. S. COLEMAN,  
Counsel to the Commission.

Upon application of the company the following rehearing order was issued:

### REHEARING ORDER No. 789.

October 16, 1908.

An order, No. 474, having been made and filed herein on May 8, 1908, under and pursuant to an Order for Hearing No. 388, made March 27, 1908, directing the said Union Railway Company and Frederick W. Whitridge, its receiver, to extend their line on Fort Schuyler road from the easterly terminus at the intersection of said road with the Eastern boulevard along said Eastern boulevard up to the point where Town Dock road intersects said Eastern boulevard and as far as the franchise rights of the said company extend on said Eastern boulevard, and said Order No. 474 having been duly served upon the Union Railway Company and Frederick W. Whitridge, its receiver, and said company having accepted said Order No. 474 on May 12, 1908, and said company having subsequently, on October 14, 1908, applied in writing to this Commission for a rehearing in respect to the matter contained in paragraph (1) of said Order No. 474, and sufficient reason for said rehearing having been made to appear;

Ordered, That said request for a rehearing be granted, and that the said rehearing upon the matters contained in paragraph (1) of said Order No. 474, entered and filed on May 8, 1908, be held on the 5th day of November, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of Order No. 474, if any part thereof is unjust, unwise, and whether the said Order No. 474 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said complainants and the said Union Railway Company and Frederick W. Whitridge, its receiver, be given at least ten (10) days' notice of such rehearing, by service upon them, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Further ordered, That the time of the said Union Railway Company and Frederick W. Whitridge, its receiver, within which to comply with the terms of paragraph (1) of said Order No. 474 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held November 5th.

The following final order was issued:

**FINAL ORDER No. 827, VACATING IN PART ORDER No. 474.**  
November 10, 1908.

This matter coming on upon the report of the rehearing had herein on the 5th day of November, 1908, and it appearing that the said hearing was had pursuant to Order for Rehearing No. 749, dated the 17th day of October, 1908, and returnable on the 5th day of November, 1908, and it appearing that said order was duly served upon the Union Railway Company and upon Frederick W. Whitridge, as receiver of said company; and it appearing that said order for rehearing was issued by the Commission upon due application of said company after service on said company of Final Order No. 474, made and filed herein on May 8, 1908, ordering and directing said company and said receiver, among other things, to extend their line from the easterly terminus of said line on Fort Schuyler road, at the intersection of said road with Eastern boulevard up to the point where said Eastern boulevard is intersected by the Town Dock road, and as far as the franchise rights of the said company extend on Eastern boulevard, and to complete said extension and begin the operation of cars thereon not later than the 15th day of June, 1908, and after service on said company of various extension orders extending the time for the completion of such line; and it appearing that said rehearing was had by and before the Commission on the matters embraced in said order for rehearing on the 5th day of November, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and Henry A. Robinson, Esq., appearing for said railway company and for said receiver; and proof having been taken upon said rehearing, and it having been made to appear after the proceedings on said rehearing that the Union Railway Company has no franchise rights on Eastern boulevard, or, at least, that the franchise rights on Eastern boulevard are of doubtful validity, and that under the circumstances such original order No. 474, in so far as it directs the extension of such line upon Eastern boulevard, may have been unwarranted, and that it would therefore be proper to direct that said Final Order No. 474 be abrogated to that extent.

Now, on motion of George S. Coleman, Esq., Counsel for the Commission, it is

**Ordered:** 1. That said original Order No. 474 of this Commission, in so far as it directs the extension of the line of the Union Railway Company on Eastern boulevard, be and the same hereby is abrogated, vacated, and set aside.

2. That this order shall take effect immediately and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. That this order shall be without prejudice to the right of the Commission to hold such other and further hearing or hearings and to issue such other and further order or orders in the matter of the extension of the line of said company on Eastern boulevard or elsewhere, as may to the Commission seem just and reasonable.

4. That this order shall be filed in the office of the Commission and a certified copy thereof be served upon said railway company and upon said Frederick W. Whitridge, as receiver of said company.

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## OPINIONS, ORDERS AND REPORTS BASED MAINLY ON MANNER OF OPERATION.

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**Brooklyn Heights Railroad Company.**—Cross-over switches on the Nostrand avenue line at Church avenue; turning cars back at Church avenue.

Hearing Order No. 326.  
Opinion of Commissioner Bassett.  
Final Order No. 376.

In the Matter  
of the

Hearing upon motion of the Commission on the question of changes in the regulations, practices and service of the BROOKLYN HEIGHTS RAILROAD COMPANY.

"Cross-over switches on the Nostrand avenue line at Church avenue."

HEARING ORDER No. 326,  
March 10, 1908.

*It is hereby ordered,* That a hearing be had on the 23rd day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of

Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the State of New York, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances and service of the said company, as hereinafter set forth, are such as may be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

1. That the cars at present operated on the Nostrand avenue line be run through to the southerly terminus of said line at Vanderveer Park, instead of some of them being turned back at Church avenue.

2. That the cross-over switch located at Nostrand and Church avenues on the Nostrand avenue line be removed.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions, and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered.* That the said Brooklyn Heights Railroad Company be given at least ten (10) days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held March 23d.

\*[It is not proper to order removal of cross-over as a means of correcting abuse of switching back cars unnecessarily.]

**OPINION OF COMMISSION.  
(Adopted March 27, 1908.)**

COMMISSIONER BASSETT:—

This matter was brought to the attention of the Commission by the complaints of the Flatbush Tax Payers' Association and others. Their grievance is that the railroad company switches back cars at Church avenue which should run through to Vanderveer park. As a means of putting an end to this abuse, the complainants ask that the company be ordered to remove the cross-over switch at Church avenue.

After hearing the testimony of the complainants and of the railroad company, I believe that there is cause for complaint, but I do not believe that the proper method of correcting the existing abuses is to order the switch torn up. This cross-over or switch has its proper uses, and I believe that in this case and in all similar cases the Commission should refuse to order removal of cross-overs as a means of correcting the abuse of switching cars back unnecessarily.

From the company's testimony in this hearing, it would appear that a two and one-half minute headway is maintained in rush hours under normal conditions of travel. This I believe to be sufficient, and in order to prevent unnecessary switching back of cars I present herewith an order limiting the cars switched back to those which are crippled and to the switching back of one, and that the last one, of a number of cars that have become bunched. The practice has been to switch back the first car, and this almost invariably is the heaviest loaded. By specifying the last car I have, I believe, selected the one carrying the smaller number of passengers.

I believe that the adoption of this order will remedy the evil complained of, especially as the testimony of the complainants shows that since the service of the order for hearing conditions have been very materially bettered.

Thereupon the following final order was issued:

**FINAL ORDER NO. 376.  
March 27, 1908.**

This matter coming on upon the report of the hearing had herein on the 23rd day of March, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, No. 326, made March 10, 1908, and returnable on the 23rd day of March, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company, and that the said service was by it duly

\* See footnote, page 9.

acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on March 23, 1908, before Mr. Commissioner Bassett presiding, Arthur DuBols, Esq., appearing for the Commission and Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, at which hearing proof was taken,

Now, it being made to appear, after the proceedings upon said hearing, that the regulations, practices and service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the First District on its Nostrand avenue line, between Church avenue and Vanderveer Park, has been and is unreasonable, improper and inadequate, and it being the judgment of the Commission that the said railroad company does not run cars enough reasonably to accommodate the passenger traffic transported by or offered for transportation by or offered for transportation to it on its Nostrand avenue line between Church avenue and Vanderveer Park, and that the said railroad company does not run its cars with sufficient frequency between the said points on its Nostrand avenue line.

Now, therefore, on motion of George S. Coleman, counsel to the Commission, it is  
*Ordered*, That with the exception of such cars as may be disabled or in need of immediate repair, or such car as may be the last of a group of three or more cars arriving at the Church avenue cross-over at one time, no southbound car on the Nostrand avenue line shall be switched back at Church avenue.

That in no event shall the first car of a group of three or more cars arriving at Church avenue at one time be switched back unless disabled or in need of immediate repair, nor shall any car be so switched back unless a car or cars ahead are held for the purpose of providing sufficient accommodation to carry the passengers transferring from the car switched back at Church avenue.

*And it is further ordered*, That this order shall take effect at once and continue in force for a period of two years from and after taking effect of the same, but without prejudice for an order for further or additional hearing and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years.

*And it is further ordered*, That before April 3, 1908, said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### Brooklyn Heights Railroad Company, Nassau Electric Railroad Company.—Failure to stop cars at the north end of the bridge crossing Coney Island creek.

Complaint Order No. 633.  
 Hearing Order No. 658.  
 Final Order No. 729.

**COMPLAINT OF SARAH EMMONS  
 against**

**BROOKLYN HEIGHTS RAILROAD COMPANY.**

Complaint Order No. 633 (see form, note 1) issued July 14th.

On July 24, 1908, a letter was received from J. F. Calderwood, Vice-President and General Manager of the Brooklyn Heights Railroad Company, stating that the line complained against was not operated by the Brooklyn Heights Railroad Company but by the Nassau Electric Railroad Company. Hearing Order No. 658 and Final Order No. 729 were accordingly directed to the latter company.

Hearing Order No. 658 (see form, note 3) issued August 3d.

Hearings held August 11th and 26th.

The following final order was issued:

<b>SARAH EMMONS,</b> <i>against</i> <b>NASSAU ELECTRIC RAILROAD COMPANY,</b>	<i>Complainant,</i> <i>Defendant.</i>	<b>FINAL ORDER No. 729.</b> September 22, 1908.
<i>"Failure to stop cars at North end of bridge crossing Coney Island Creek."</i> After Hearing Order No. 658, dated August 3, 1908.		

This matter coming on upon the report of the hearing had herein on August 11, 1908, August 18, 1908, and August 26, 1908; and it appearing that said hearing

was had pursuant to Order No. 658 of this Commission, issued upon complaint and answer herein, dated August 3, 1908, and returnable on August 11, 1908, at 2:30 P. M.; and it appearing that said order was duly served upon said Sarah Emmons, complainant, and said Nassau Electric Railroad Company, defendant, and that said service was by said company duly acknowledged; and it appearing that said hearing was had by and before the Commission on the matters in said complaint, answer and order specified on August 11, 1908, August 18, 1908, and August 26, 1908; and it appearing that said hearing was had by and before the Commission on the matters in said complaint, answer and order specified on the aforesaid dates before Mr. Commissioner McCarroll, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission and A. B. MacNamara, Esq., attorney, appearing for the complainant, and Arthur N. Dutton, Esq., appearing for said Nassau Electric Railroad Company; and testimony having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that the service of said company upon the line of said company known as the West End Line at and near the north end of the bridge crossing Coney Island creek is inadequate, in that northbound trolley cars of said company do not make any stop at the point mentioned, although the southbound trolley cars do stop at said point, and persons in that vicinity desiring to take northbound trolley cars are obliged to walk across said bridge to the south side thereof, in order to take said cars and northbound passengers destined for the locality mentioned are obliged to alight on the south side of said bridge and walk across said bridge; and it appearing that it is not safe for passengers to cross said bridge; and it having been made to appear after the proceedings on said hearing that changes in said service in the particulars hereinafter set forth ought reasonably to be made, in order to promote the security and convenience of the public and that ten days would be a reasonable time within which such changes should be directed to be executed,

Now, therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered*, That said Nassau Electric Railroad Company be and it hereby is directed and required

1. To fix a safe and convenient point on the north side of the aforesaid bridge at which northbound trolley cars will stop on signal of a person or persons desiring to board said cars at said point or on notice to the conductor of a passenger or passengers desiring to alight therefrom, at said point;

2. To make and enforce a rule requiring stops to be made as hereinbefore provided;

3. To continue in operation its present practice of stopping all southbound trolley cars on the north side of said bridge, at the place now in use for that purpose. It is further

*Ordered*, That the changes above mentioned be put into effect within ten days after service on said company of a certified copy of this order and continued in force until such time as the Public Service Commission for the First District shall otherwise order. It is further

*Ordered*, That said Nassau Electric Railroad Company notify the Public Service Commission for the First District within five days after service on said company of a certified copy of this order whether the terms of said order are accepted and will be obeyed.

### Brooklyn Heights Railroad Company.—Discontinuance of Thirty-ninth Street Ferry-Bay Ridge Avenue Line.

Hearing Order No. 725.  
Final Order No. 756.

WILLIAM A. DWINELL, *Complainant*,  
against

BROOKLYN HEIGHTS RAILROAD COMPANY, *Defendant*.

HEARING ORDER No. 725.  
September 18, 1908.

"Discontinuance of 39th Street Ferry-Bay Ridge Avenue Line."

Upon the complaint herein and the answer of the Brooklyn Heights Railroad Company thereto, dated July 14th, it is

*Ordered*, That upon the matters contained therein a hearing be had on the 1st day of October, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York.

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

## ORDERS OF THE COMMISSION ISSUED IN 1908.

509

*Further Ordered,* That the said complainant and the said Brooklyn Heights Railroad Company be given at least ten (10) days' notice of such hearing by service upon said William A. Dwinell, 1437 Seventy-fifth street, Brooklyn, N. Y., and upon the said Brooklyn Heights Railroad Company, either personally or by mail, of a certified copy of this order, and that at such hearing said complainant and said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held October 1st.

The following final order was issued:

ORDER No. 756.  
October 2, 1908.

An Order for Hearing, No. 725, having been made herein on the 18th day of September, 1908, upon the complaint of William A. Dwinell, dated the 8th day of July, 1908, and the answer of the Brooklyn Heights Railroad Company to said complaint, dated the 14th day of July, 1908, and said order having been duly served upon said William A. Dwinell and upon said Brooklyn Heights Railroad Company, and said hearing having come on before this Commission on the 1st day of October, 1908, Mr. Commissioner Bassett presiding, and Grosvenor H. Backus, Assistant Counsel to the Commission attending, and Mr. Arthur N. Dutton, superintendent of transportation of the Brooklyn Heights Railroad Company, appearing for said company, and said William A. Dwinell having withdrawn said complaint,

Now, on motion duly made and seconded, it is hereby

*Ordered,* That said complaint of said William A. Dwinell against said Brooklyn Heights Railroad Company be and the same hereby is dismissed without prejudice to the right of the Commission to make such further order or orders in the premises as may from time to time appear necessary or proper.

See the following proceeding.

### Brooklyn Heights Railroad Company.—Discontinuance of Thirty-ninth Street Ferry-Bay Ridge Avenue Line.

Hearing Order No. 755.  
Opinion of Commissioner Bassett.  
Dismissal Order No. 849.

In the Matter  
of the

Hearing on the motion of the Commission as to the regulations, practices and service of the BROOKLYN HEIGHTS RAILROAD COMPANY.

HEARING ORDER No. 755.  
October 2, 1908.

Discontinuance of Thirty-ninth Street Ferry-Bay Ridge Avenue Line.

*It is hereby ordered,* That a hearing be had on the 8th day of October, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices or service of said company in respect to the transportation of persons within the First District, to wit, over its line or lines between Thirty-ninth Street Ferry and Ulmer Park, in the borough of Brooklyn, are unjust, unreasonable, improper or inadequate, and if it be so found then to determine whether changes in said regulations, practices or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, namely:

1. Whether the said Brooklyn Heights Railroad Company should be directed to restore its service between Thirty-ninth Street Ferry and Ulmer park, via Second avenue, Sixty-fifth street, Third avenue, Bay Ridge avenue, Thirteenth avenue, Eighty-sixth street and Twenty-fifth avenue, or other street or streets, as said service existed prior to the 1st day of July, 1908, or to establish a service substantially similar to such service as existed between Thirty-ninth Street ferry and Ulmer park prior to said 1st day of July, 1908.

510 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

2. Whether said company should be directed to give the right of way to the cars operated on said service between Thirty-ninth Street ferry to Ulmer park, in each direction, so that said cars shall not be held up by the switching of Third avenue cars at Third avenue and Sixty-fifth street or by the Hamilton avenue cars at Sixty-seventh street.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said Brooklyn Heights Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held October 8th, 16th, 23d, 30th and November 6th.

OPINION OF COMMISSION.  
(Adopted November 20, 1908.)

COMMISSIONER BASSETT:—

At one time the Brooklyn Heights Railroad Company operated a surface line between Thirty-ninth street ferry and Ulmer park, Brooklyn, via Second avenue, Third avenue, Bay Ridge avenue, Thirteenth avenue, Eighty-sixth street and Twenty-fifth avenue. The traffic upon said line became so small that it was discontinued. The present complaint prays for its restoration. Passengers using the Thirty-ninth street ferry can be accommodated by transfers so that they may travel over the same route. This is accomplished by using other surface lines having their termini at Thirty-ninth street ferry or at the Sixty-fifth street station of the elevated railroad. The complainants, however, urge that the cars proceeding down the incline from the Sixty-fifth street elevated railroad station are so crowded, especially in the rush hours, that it is difficult or impossible for them to obtain adequate service at the transfer points. The difficulties of the situation at the Sixty-fifth street elevated terminal are pointed out in my opinion in Order No. 597. The proof shows that if the discontinued line should be restored it would not average more than five passengers in each car. This conclusion is based upon the number of passengers now using by transfers the identical route of the discontinued line. It is likely that if the line were actually restored more passengers than this would use it, but the number would undoubtedly be much smaller than would warrant ordering the restoration of the line. The opinion of the experts of the Commission is that the traffic would not warrant such an order. I, therefore, recommend that the complaint be dismissed.

This investigation together with communications from various citizens has brought into prominence the deplorable conditions existing at the Brooklyn terminal of the Thirty-ninth street municipal ferry. Passengers are compelled to walk nearly one-third of a mile from the surface cars to the ferry house. This walk is without shelter most of the way and causes an entire lack of co-operation between the movements of surface cars and ferry boats. I have taken up the matter with the railroad companies involved and the dock department in an endeavor to cause the operation of the surface lines along temporary structures on the city's property to the ferry house. Progress has already been made in this direction and I hope to be able to report soon that an arrangement has been concluded for the temporary accommodation of the traffic near the permanent ferry house and approach is finished.

Thereupon the following dismissal order was issued:

DISMISSAL ORDER No. 549  
NOVEMBER 20, 1908

An order of the Commission No. 558, having been made before the date of the hearing, is being served on October 21, 1908, in the Brooklyn, State of New York, at the Sixty-fifth Street Ferry-Dock, Brooklyn, New York, by the Clerk of the Commission, or his agent, or by any person authorized by the Commission to act as its agent, that the Brooklyn Heights Railroad Company, Bay Ridge Avenue, Brooklyn, New York, be directed to give the right of way to the cars operated on said service between Thirty-ninth Street ferry to Ulmer park, in each direction, so that said cars shall not be held up by the switching of Third avenue cars at Third avenue and Sixty-fifth street or by the Hamilton avenue cars at Sixty-seventh street.

**Brooklyn Heights Railroad Company.**—Inadequate service on the crosstown line at Manhattan avenue bridge over Newtown creek.

Complaint Order No. 691.  
Hearing Order No. 724.  
Opinion of Counsel.  
Opinion of Commissioner Bassett.  
Final Order No. 845.  
Extension Order, Case 845.  
Rehearing Order, Case 845.  
Opinion of Commissioner Bassett.  
Final Order, Case 845.

**COMPLAINT OF BARTLEY J. WRIGHT  
against**

**BROOKLYN HEIGHTS RAILROAD COMPANY.**

Complaint Order No. 691 (see form, note 1) issued August 25th.

The company answered on September 1st, stating that the service was reasonable and that it would be impracticable to extend the Crosstown service to Long Island City during the greater period of the day because of interference on the bridge caused by frequent opening of the draw. The following hearing order, "on motion of the Commission," was issued:

In the Matter

of the

Hearing on motion of the Commission as to the regulations, practices, equipment, appliances and service of the BROOKLYN HEIGHTS RAILROAD COMPANY, in the respects hereinafter mentioned.

HEARING ORDER No. 724.  
September 18, 1908.

"Inadequate service on the crosstown line at Manhattan Avenue bridge, over Newtown creek."

*It is hereby ordered,* That a hearing be had on the Thirtieth day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances and service of the Brooklyn Heights Railroad Company upon and near its line known as the Crosstown Line upon and across the bridge known as the Manhattan Avenue bridge, over Newtown creek, and upon and near the approaches to said bridge, in the city and State of New York, in respect to the transportation of persons in said city are unjust, unreasonable, improper or inadequate; and if so found, then to inquire and determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following will be reasonable, adequate and proper, and whether changes therein and reasonably to be made, in public and in order to serve the security and convenience of the service and facilities for the transportation of passengers.

3. When the company

on the line as the

Newtown Creek all the

time it is in use

and the number of

cars to be used

directed and required to operate its cars upon said bridge and upon the track and

so as to afford through service on said line across

the bridge and upon the track and

so as to afford through service on said line across

the bridge and upon the track and

so as to afford through service on said line across

512 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

4. Whether other changes, improvements and additions in and to the regulations, practices, equipment, appliances or service of said Brooklyn Heights Railroad Company upon said line and across said bridge ought reasonably to be made, for the purposes aforesaid.

5. If it be found that the changes, improvements and additions above mentioned or any of them are such as ought reasonably to be made, then to determine the particulars and extent thereof and the time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable. It is further

Ordered, That the said Brooklyn Heights Railroad Company be given at least eight (8) days' notice of said hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held September 30th and October 7th and 8th.

OPINION OF COUNSEL.

October 28, 1908.

Hon. EDWARD M. BASSETT, *Commissioner*:

SIR:—Referring to your oral request that I inform you concerning the franchise rights of the Brooklyn Heights Railroad Company upon and across the Manhattan avenue bridge over Newtown creek, and from the northerly side of Newtown creek to the Thirty-fourth street ferry, and supplementing the report already made to you by Mr. Chamberlain, I beg to advise you as follows:

By chapter 823 of the Laws of 1866, the Legislature authorized and empowered the Nassau Railroad Company of the city of Brooklyn to construct, maintain and operate, with horse power only, a railroad in and upon certain streets, avenues and places, route and routes specified in the act, a copy of which was attached to Mr. Chamberlain's report. The route, in so far as is material here, is given in the act as follows:

"Beginning at the ferries at the foot of West Second street, near the depots of the Long Island and Flushing Railroad Companies; at Hunter's Point in Queens county, thence by double track along West Second street and the turnpike, across the bridge over Newtown creek, leading to Union avenue, thence along Union avenue, Orchard street, Van Cott avenue and Fifth street to Broadway, thence along Broadway and Rush street to Kent avenue, thence along Kent avenue and Clymer and Taylor streets to a point where Washington avenue when built and extended across the Wallabout bay will meet or connect with either of said streets, thence along Washington avenue, Montgomery street and Franklin avenue to the town of Flatbush, with a continuation from Washington avenue along Park avenue and Flushing avenue to Raymond and Navy streets, thence along Raymond and Navy streets to Willoughby street, thence along Willoughby street to the City Hall and the County Court House on Joralemon street, thence along Joralemon and Court streets to Atlantic street, and thence along Atlantic street to the South Ferry, thence returning by the same route or streets and avenues to the junction of Broadway and Fourth street, thence along Fourth street and North Ninth street to Fifth street, and thence along Fifth street, Van Cott avenue, Orchard street, Union avenue, and across said bridge over Newtown creek and along said turnpike and West Second street to the ferries, the point or place of beginning; with the switches, turnouts, and sidings actually necessary and proper for the operation of such road."

The Nassau Railroad Company was incorporated March 3, 1865, under the General Railroad Act of 1850.

By chapter 576 of the Laws of 1868, the Nassau Railroad Company and another company (the Greenpoint and Williamsburgh Railroad Company) were consolidated under the name of Brooklyn City, Hunter's Point and Prospect Park Railroad Company. By chapter 453 of the Laws of 1872 the name "Brooklyn City, Hunter's Point and Prospect Park Railroad Company" was changed to "Brooklyn Crosstown Railroad Company." The properties of this company were subsequently leased to the Brooklyn City Railroad Company, and were held under lease by that company for some time, as were also the properties of the following companies:

Bushwick Railroad Company; Calvary Cemetery, Greenpoint and Brooklyn Railroad Company; New Williamsburgh and Flatbush Railroad Company; Greenpoint and Lorimer Street Railroad Company; Grand Street and Newtown Railroad Company.

On October 31, 1890, the Brooklyn City Railroad Company having acquired the capital stock of these companies filed a certificate thereof in the office of the Secretary of State, whereupon these properties merged into and became a part of the Brooklyn City Railroad Company.

The Brooklyn City Railroad Company thus succeeded to all the rights of the companies merged therewith.

On January 11, 1892, the Common Council of the city of Brooklyn granted to the Brooklyn City Railroad Company permission to change its motive power from horse power to electric power.

On February 14, 1893, the properties of this company were leased for 999 years to the Brooklyn Heights Railroad Company, by which company they are now operated.

With reference to the right of the company to operate cars over the present bridge, I would call attention to section 110 of the Railroad Law, which is as follows:

"Should any street surface railroad company have crossed any bridge as a part of its route for a period of more than five years and should any other bridge be substituted therefor at any time, such company shall have the right to cross such substituted bridge and to lay and use railway tracks thereon for the transit of its cars and to make all changes and extensions of its route subject to all the provisions of this act, as the convenient operation of its cars and public convenience may require."

Regarding operation through Borden avenue to and from the Thirty-fourth street ferry. It will be noted that the grant of April 26, 1866, to the Nassau Company covers this route. I am informed that the "West Second Street" mentioned in the grant is now Borden avenue. For a number of years a horse car service was operated over this line, the line being called the "Crosstown Annex Line," and being a double track line .161 miles in length. I find this line mentioned in the Railroad Reports beginning with 1897, under the name mentioned. The report for 1902 shows the line still in operation, but the reports for 1903 and succeeding years show the line "not operated." It would appear, therefore, that the line was discontinued in 1902 or 1903. I am informed by the railroad company that the line was discontinued at the time of the construction of the new bridge over Newtown creek. I have been unable to ascertain just when the operation of the line was commenced. The Railroad Reports prior to 1897 make no mention of this as a separate line.

The abandonment by the corporation of the portion of its line mentioned did not determine or forfeit its franchise. Such abandonment operated only as a cause of forfeiture of which the People alone could take advantage.

Trelford v. Coney Island and Brooklyn Railroad Company, 6 App. Div. 204.

People v. Broadway Railroad Company, 126 N. Y. 29.

Paige v. Schenectady Railway Company, 178 N. Y. 102, 114.

My conclusion is that the Brooklyn Heights Railroad Company has a valid franchise over the route described in the act of the legislature and across the new bridge over Newtown creek. It has a valid franchise in Borden avenue between the ferries at the foot of that avenue and the point where the line originally turned aside to cross the old bridge over Newtown creek. The rights of the company in this avenue have not been forfeited. However, the present bridge is much higher and longer than the old bridge and is elevated above and extends beyond Borden avenue so that it would be impossible to operate the line in the manner contemplated by the act mentioned. In order to operate the line as a continuous line additional franchise rights would have to be procured between the northerly terminus of the bridge and Borden avenue. Of course, a shuttle service could be put on in Borden avenue, but this probably would not pay, as the line would not connect with the main part of the Crosstown line. I suggest, therefore, that the company be advised to apply to the Commission for leave to abandon the portion of the line lying in Borden avenue. In any event, in view of the changed conditions, the company probably should not be required to operate this portion of its franchise.

Respectfully yours,

(Signed) GEO. S. COLEMAN,  
Counsel to the Commission.

#### OPINION OF COMMISSION.

(Adopted November 20, 1908.)

#### COMMISSIONER BASSETT:—

Two lines of surface cars operated by the Brooklyn Heights Railroad Company proceed on Manhattan avenue across Newtown creek to Long Island City. Newtown creek is a navigable stream and the United States government requires the operation of a lift bridge in order to accommodate navigation. The constant opening of this bridge will disarrange any regular surface car schedule. The company has endeavored to meet this condition by operating the Greenpoint line throughout the day and additional service provided by shuttle cars during rush hours across the bridge. This service causes a great deal of complaint because of the infrequent and irregular operation and the constant change of cars. The remedy proposed allows the two said lines, both of which are important long distance lines, to stop on the Brooklyn side of the bridge, with the exception that the Crosstown line proceeds to Long Island City in the evening hours. This allows the maintenance of a more regular headway on these important lines. The shuttle service is enlarged and improved. Connections will be made between the shuttle cars and the cars of the through lines. The details of this plan are sufficiently given in the order.

Correspondence is now going on between the Commission and the Department of Bridges in an endeavor to bring about less frequent opening of the lift bridge.

Thereupon the following final order was issued:

**ORDER No. 845.**

November 20, 1908.

This matter coming on upon the report of the hearing had herein on the 30th day of September, 1908, and on the 8th day of October, 1908; and it appearing that the said hearing was had by and before the Commission pursuant to hearing order No. 724, dated September 18, 1908, and returnable on the 30th day of September, 1908, at 2:30 o'clock in the afternoon; and it appearing that said hearing order No. 724 was issued upon motion of the Commission after service on the Brooklyn Heights Railroad Company of complaint order No. 691 issued upon the complaint of Bartley J. Wright, Esq., and after the answer of said railroad company to said complaint had been filed with the Commission; and it appearing that said order was duly served upon said Brooklyn Heights Railroad Company and that such service was by it duly acknowledged; and it appearing that said hearing was had by and before the Commission on the matters embraced in said complaint and answer and order for hearing on September 30, 1908, and on October 8, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and Arthur N. Dutton, Esq., appearing for said railroad company; and testimony having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that the regulations, practices, equipment, appliances and service of the Brooklyn Heights Railroad Company upon and near its line known as the Crosstown Line upon and across the bridge known as the Manhattan Avenue bridge (or Vernon Avenue bridge) over Newtown creek and upon and near the approaches to said bridge in the city and State of New York in respect to the transportation of persons in said city are improper and inadequate in the respects hereinafter mentioned and that changes therein and additions thereto in the particulars following ought reasonably to be made in order to promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of passengers; and it having been made to appear after the proceedings on said hearing that it will be reasonable to require that the provisions of this order be put into effect by said company within the period of time hereinafter mentioned, and that such periods of time would be reasonable and adequate for that purpose.

Now, therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,  
*It is ordered:*

1. That said company discontinue the present through operation of the Greenpoint Line across said bridge and establish the northerly terminus of said line at Manhattan avenue and Commercial street;

2. That between the hours of 8 P. M. and 6 A. M. daily, said company operate all cars of its Crosstown Line through to Fourth street, Long Island City;

3. That between the hours of 6 A. M. and 8 P. M. daily, said company install and maintain across said bridge between Box street and Fourth street a shuttle service with a scheduled headway of not less than six (6) minutes in such a manner as to accommodate passengers transferring from the Greenpoint Line and from the Crosstown Line;

4. That the dead section of trolley wire created by the opening of the draw of said bridge be provided by said company with electric power at all times;

5. That said company comply with the requirements of subdivisions 1, 2 and 3 of this order on December 3, 1908, and that said company comply with the requirements of section 4 of this order on or before December 23, 1908;

6. That this order shall take effect as hereinbefore provided and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

*Further ordered,* That the said company be, and hereby is, authorized to make the changes in routes as hereinbefore ordered upon filing and publishing as provided by Tariff Circular No. 1 at least five days in advance of the said December 3, 1908, a supplement which shall bear the following notation "Issued under special permission of the P. S. C. 1 Order No. 845 of November 20, 1908."

*Further ordered,* That said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District within five (5) days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

**CASE NO. 845, EXTENSION ORDER.**

December 1, 1908.

An order, No. 845, having been made herein on or about the 20th day of November, 1908, directing the Brooklyn Heights Railroad Company (1) to make certain changes and improvements in the service on its crosstown line at Manhattan avenue bridge over Newtown creek by December 3, 1908, schedules of such changes to be filed with the Commission at least five days prior to that date, (2) to provide the dead section of trolley wire created by the opening of the draw of said bridge with electric power at all times, such provision to be made before December 23,

The following final order was issued:

**FINAL ORDER No. 827, VACATING IN PART ORDER No. 474.**

November 10, 1908.

This matter coming on upon the report of the rehearing had herein on the 5th day of November, 1908, and it appearing that the said hearing was had pursuant to Order for Rehearing No. 789, dated the 17th day of October, 1908, and returnable on the 5th day of November, 1908, and it appearing that said order was duly served upon the Union Railway Company and upon Frederick W. Whitridge, as receiver of said company; and it appearing that said order for rehearing was issued by the Commission upon due application of said company after service on said company of Final Order No. 474, made and filed herein on May 8, 1908, ordering and directing said company and said receiver, among other things, to extend their line from the easterly terminus of said line on Fort Schuyler road, at the intersection of said road with Eastern boulevard up to the point where said Eastern boulevard is intersected by the Town Dock road, and as far as the franchise rights of the said company extend on Eastern boulevard, and to complete said extension and begin the operation of cars thereon not later than the 15th day of June, 1908, and after service on said company of various extension orders extending the time for the completion of such line; and it appearing that said rehearing was had by and before the Commission on the matters embraced in said order for rehearing on the 5th day of November, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and Henry A. Robinson, Esq., appearing for said railway company and for said receiver; and proof having been taken upon said rehearing, and it having been made to appear after the proceedings on said rehearing that the Union Railway Company has no franchise rights on Eastern boulevard, or, at least, that the franchise rights on Eastern boulevard are of doubtful validity, and that under the circumstances such original order No. 474, in so far as it directs the extension of such line upon Eastern boulevard, may have been unwarranted, and that it would therefore be proper to direct that said Final Order No. 474 be abrogated to that extent.

Now, on motion of George S. Coleman, Esq., Counsel for the Commission, it is

**Ordered:** 1. That said original Order No. 474 of this Commission, in so far as it directs the extension of the line of the Union Railway Company on Eastern boulevard, be and the same hereby is abrogated, vacated and set aside.

2. That this order shall take effect immediately and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

3. That this order shall be without prejudice to the right of the Commission to hold such other and further hearing or hearings and to issue such other and further order or orders in the matter of the extension of the line of said company on Eastern boulevard or elsewhere, as may to the Commission seem just and reasonable.

4. That this order shall be filed in the office of the Commission and a certified copy thereof be served upon said railway company and upon said Frederick W. Whitridge, as receiver of said company.

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**OPINIONS, ORDERS AND REPORTS BASED MAINLY  
ON MANNER OF OPERATION.**

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**Brooklyn Heights Railroad Company.**—Cross-over switches on the Nostrand avenue line at Church avenue; turning cars back at Church avenue.

Hearing Order No. 326.  
Opinion of Commissioner Bassett.  
Final Order No. 376.

In the Matter  
of the

Hearing upon motion of the Commission on the question of changes in the regulations, practices and service of the BROOKLYN HEIGHTS RAILROAD COMPANY.

"Cross-over switches on the Nostrand avenue line at Church avenue."

HEARING ORDER No. 326,  
March 10, 1908.

*It is hereby ordered,* That a hearing be had on the 23rd day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of

## 506 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the State of New York, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances and service of the said company, as hereinafter set forth, are such as may be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

1. That the cars at present operated on the Nostrand avenue line be run through to the southerly terminus of said line at Vanderveer Park, instead of some of them being turned back at Church avenue.

2. That the cross-over switch located at Nostrand and Church avenues on the Nostrand avenue line be removed.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions, and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further Ordered.* That the said Brooklyn Heights Railroad Company be given at least ten (10) days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held March 23d.

\*[It is not proper to order removal of cross-over as a means of correcting abuse of switching back cars unnecessarily.]

### OPINION OF COMMISSION. (Adopted March 27, 1908.)

COMMISSIONER BASSETT:—

This matter was brought to the attention of the Commission by the complainants of the Flatbush Tax Payers' Association and others. Their grievance is that the railroad company switches back cars at Church avenue which should run through to Vanderveer park. As a means of putting an end to this abuse, the complainants ask that the company be ordered to remove the cross-over switch at Church avenue.

After hearing the testimony of the complainants and of the railroad company, I believe that there is cause for complaint, but I do not believe that the proper method of correcting the existing abuses is to order the switch torn up. This cross-over or switch has its proper uses, and I believe that in this case and in all similar cases the Commission should refuse to order removal of cross-overs as a means of correcting the abuse of switching cars back unnecessarily.

From the company's testimony in this hearing, it would appear that a two and one-half minute headway is maintained in rush hours under normal conditions of travel. This I believe to be sufficient, and in order to prevent unnecessary switching back of cars I present herewith an order limiting the cars switched back to those which are crippled and to the switching back of one, and that the last one, of a number of cars that have become bunched. The practice has been to switch back the first car, and this almost invariably is the heaviest loaded. By specifying the last car I have, I believe, selected the one carrying the smaller number of passengers.

I believe that the adoption of this order will remedy the evil complained of, especially as the testimony of the complainants shows that since the service of the order for hearing conditions have been very materially bettered.

Thereupon the following final order was issued:

### FINAL ORDER NO. 376.

March 27, 1908.

This matter coming upon the report of the hearing had herein on the 23rd day of March, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, No. 326, made March 10, 1908, and returnable on the 23rd day of March, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company, and that the said service was by it duly

\* See footnote, page 9.

**acknowledged** and that the said hearing was held by and before the Commission on the matters in said order specified on March 23, 1908, before Mr. Commissioner Bassett presiding, Arthur DuBois, Esq., appearing for the Commission and Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, at which hearing proof was taken,

Now, it being made to appear, after the proceedings upon said hearing, that the regulations, practices and service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the First District on its Nostrand avenue line, between Church avenue and Vanderveer Park, has been and is unreasonable, improper and inadequate, and it being the judgment of the Commission that the said railroad company does not run cars enough reasonably to accommodate the passenger traffic transported by or offered for transportation by or offered for transportation to it on its Nostrand avenue line between Church avenue and Vanderveer Park, and that the said railroad company does not run its cars with sufficient frequency between the said points on its Nostrand avenue line.

Now, therefore, on motion of George S. Coleman, counsel to the Commission, it is

**Ordered**, That with the exception of such cars as may be disabled or in need of immediate repair, or such car as may be the last of a group of three or more cars arriving at the Church avenue cross-over at one time, no southbound car on the Nostrand avenue line shall be switched back at Church avenue.

That in no event shall the first car of a group of three or more cars arriving at Church avenue at one time be switched back unless disabled or in need of immediate repair, nor shall any car be so switched back unless a car or cars ahead are held for the purpose of providing sufficient accommodation to carry the passengers transferring from the car switched back at Church avenue.

**And it is further ordered**, That this order shall take effect at once and continue in force for a period of two years from and after taking effect of the same, but without prejudice for an order for further or additional hearing and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years.

**And it is further ordered**, That before April 3, 1908, said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### Brooklyn Heights Railroad Company, Nassau Electric Railroad Company.—Failure to stop cars at the north end of the bridge crossing Coney Island creek.

Complaint Order No. 633.  
Hearing Order No. 658.  
Final Order No. 729.

#### COMPLAINT OF SARAH EMMONS against

BROOKLYN HEIGHTS RAILROAD COMPANY.

Complaint Order No. 633 (see form, note 1) issued July 14th.

On July 24, 1908, a letter was received from J. F. Calderwood, Vice-President and General Manager of the Brooklyn Heights Railroad Company, stating that the line complained against was not operated by the Brooklyn Heights Railroad Company but by the Nassau Electric Railroad Company. Hearing Order No. 658 and Final Order No. 729 were accordingly directed to the latter company.

Hearing Order No. 658 (see form, note 3) issued August 3d.

Hearings held August 11th and 26th.

The following final order was issued:

SARAH EMMONS, against	Complainant,	FINAL ORDER No. 729. September 22, 1908.
NASSAU ELECTRIC RAILROAD COMPANY, Defendant.		
"Failure to stop cars at North end of bridge crossing Coney Island Creek." After Hearing Order No. 658, dated August 3, 1908.		

This matter coming on upon the report of the hearing had herein on August 11, 1908, August 18, 1908, and August 26, 1908; and it appearing that said hearing

## 508 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

was had pursuant to Order No. 658 of this Commission, issued upon complaint and answer herein, dated August 3, 1908, and returnable on August 11, 1908, at 2:30 P. M.; and it appearing that said order was duly served upon said Sarah Emmons, complainant, and said Nassau Electric Railroad Company, defendant, and that said service was by said company duly acknowledged; and it appearing that said hearing was had by and before the Commission on the matters in said complaint, answer and order specified on August 11, 1908, August 18, 1908, and August 26, 1908; and it appearing that said hearing was had by and before the Commission on the matters in said complaint, answer and order specified on the aforesaid dates before Mr. Commissioner McCarroll, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission and A. B. MacNamara, Esq., attorney, appearing for the complainant, and Arthur N. Dutton, Esq., appearing for said Nassau Electric Railroad Company; and testimony having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that the service of said company upon the line of said company known as the West End Line at and near the north end of the bridge crossing Coney Island creek is inadequate, in that northbound trolley cars of said company do not make any stop at the point mentioned, although the southbound trolley cars do stop at said point, and persons in that vicinity desiring to take northbound trolley cars are obliged to walk across said bridge to the south side thereof, in order to take said cars and northbound passengers destined for the locality mentioned are obliged to alight on the south side of said bridge and walk across said bridge; and it appearing that it is not safe for passengers to cross said bridge; and it having been made to appear after the proceedings on said hearing that changes in said service in the particulars hereinafter set forth ought reasonably to be made, in order to promote the security and convenience of the public and that ten days would be a reasonable time within which such changes should be directed to be executed.

Now, therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered*, That said Nassau Electric Railroad Company be and it hereby is directed and required

1. To fix a safe and convenient point on the north side of the aforesaid bridge at which northbound trolley cars will stop on signal of a person or persons desiring to board said cars at said point or on notice to the conductor of a passenger or passengers desiring to alight therefrom, at said point;

2. To make and enforce a rule requiring stops to be made as hereinbefore provided;

3. To continue in operation its present practice of stopping all southbound trolley cars on the north side of said bridge, at the place now in use for that purpose. It is further

*Ordered*, That the changes above mentioned be put into effect within ten days after service on said company of a certified copy of this order and continued in force until such time as the Public Service Commission for the First District shall otherwise order. It is further

*Ordered*, That said Nassau Electric Railroad Company notify the Public Service Commission for the First District within five days after service on said company of a certified copy of this order whether the terms of said order are accepted and will be obeyed.

### Brooklyn Heights Railroad Company.—Discontinuance of Thirty-ninth Street Ferry-Bay Ridge Avenue Line.

Hearing Order No. 725.  
Final Order No. 756.

WILLIAM A. DWINELL, *Complainant,*  
*against*

BROOKLYN HEIGHTS RAILROAD COMPANY, *Defendant.*

HEARING ORDER No. 725.  
September 18, 1908.

"Discontinuance of 39th Street Ferry-Bay Ridge Avenue Line."

Upon the complaint herein and the answer of the Brooklyn Heights Railroad Company thereto, dated July 14th, it is

*Ordered*, That upon the matters contained therein a hearing be had on the 1st day of October, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York.

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

**Further Ordered,** That the said complainant and the said Brooklyn Heights Railroad Company be given at least ten (10) days' notice of such hearing by service upon said William A. Dwinell, 1437 Seventy-fifth street, Brooklyn, N. Y., and upon the said Brooklyn Heights Railroad Company, either personally or by mail, of a certified copy of this order, and that at such hearing said complainant and said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held October 1st.

The following final order was issued:

ORDER No. 756.

October 2, 1908.

An Order for Hearing, No. 725, having been made herein on the 18th day of September, 1908, upon the complaint of William A. Dwinell, dated the 6th day of July, 1908, and the answer of the Brooklyn Heights Railroad Company to said complaint, dated the 14th day of July, 1908, and said order having been duly served upon said William A. Dwinell and upon said Brooklyn Heights Railroad Company, and said hearing having come on before this Commission on the 1st day of October, 1908, Mr. Commissioner Bassett presiding, and Mr. Arthur N. Dutton, Assistant Counsel to the Commission attending, and Mr. Grosvenor H. Backus, Superintendent of transportation of the Brooklyn Heights Railroad Company, appearing for said company, and said William A. Dwinell having withdrawn said complaint,

Now, on motion duly made and seconded, it is hereby

**Ordered,** That said complaint of said William A. Dwinell against said Brooklyn Heights Railroad Company be and the same hereby is dismissed without prejudice to the right of the Commission to make such further order or orders in the premises as may from time to time appear necessary or proper.

See the following proceeding.

**Brooklyn Heights Railroad Company.—Discontinuance of Thirty-ninth Street Ferry-Bay Ridge Avenue Line.**

Hearing Order No. 755.

Opinion of Commissioner Bassett.

Dismissal Order No. 849.

In the Matter  
of the

Hearing on the motion of the Commission as to the regulations, practices and service of the BROOKLYN HEIGHTS RAILROAD COMPANY.

HEARING ORDER No. 755.  
October 2, 1908.

Discontinuance of Thirty-ninth Street Ferry-Bay Ridge Avenue Line.

*It is hereby ordered,* That a hearing be had on the 8th day of October, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices or service of said company in respect to the transportation of persons within the First District, to wit, over its line or lines between Thirty-ninth Street Ferry and Ulmer Park, in the borough of Brooklyn, are unjust, unreasonable, improper or inadequate, and if it be so found then to determine whether changes in said regulations, practices or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, namely:

1. Whether the said Brooklyn Heights Railroad Company should be directed to restore its service between Thirty-ninth Street Ferry and Ulmer park, via Second avenue, Sixty-fifth street, Third avenue, Bay Ridge avenue, Thirteenth avenue, Eighty-sixth street and Twenty-fifth avenue, or other street or streets, as said service existed prior to the 1st day of July, 1908, or to establish a service substantially similar to such service as existed between Thirty-ninth Street ferry and Ulmer park prior to said 1st day of July, 1908.

## 510 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

2. Whether said company should be directed to give the right of way to the cars operated on said service between Thirty-ninth Street ferry to Ulmer park, in each direction, so that said cars shall not be held up by the switching of Third avenue cars at Third avenue and Sixty-fifth street or by the Hamilton avenue cars at Sixty-seventh street.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said Brooklyn Heights Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters heretofore set forth.

Hearings were held October 8th, 16th, 23d, 30th and November 6th.

### OPINION OF COMMISSION. (Adopted November 20, 1908.)

COMMISSIONER BASSETT:—

At one time the Brooklyn Heights Railroad Company operated a surface line between Thirty-ninth street ferry and Ulmer park, Brooklyn, via Second avenue, Third avenue, Bay Ridge avenue, Thirteenth avenue, Eighty-sixth street and Twenty-fifth avenue. The traffic upon said line became so small that it was discontinued. The present complaint prays for its restoration. Passengers using the Thirty-ninth street ferry can be accommodated by transfers so that they may travel over the same route. This is accomplished by using other surface lines having their termini at Thirty-ninth street ferry or at the Sixty-fifth street station of the elevated railroad. The complainants, however, urge that the cars proceeding down the incline from the Sixty-fifth street elevated railroad station are so crowded, especially in the rush hours, that it is difficult or impossible for them to obtain adequate service at the transfer points. The difficulties of the situation at the Sixty-fifth street elevated terminal are pointed out in my opinion in Order No. 597. The proof shows that if the discontinued line should be restored it would not average more than five passengers in each car. This conclusion is based upon the number of passengers now using by transfers the identical route of the discontinued line. It is likely that if the line were actually restored more passengers than this would use it, but the number would undoubtedly be much smaller than would warrant ordering the restoration of the line. The opinion of the experts of the Commission is that the traffic would not warrant such an order. I, therefore, recommend that the complaint be dismissed.

This investigation together with communications from various citizens has brought into prominence the deplorable conditions existing at the Brooklyn terminal of the Thirty-ninth street municipal ferry. Passengers are compelled to walk nearly one-third of a mile from the surface cars to the ferry house. This walk is without shelter most of the way and causes an entire lack of co-operation between the movements of surface cars and ferry boats. I have taken up the matter with the railroad companies involved and the dock department in an endeavor to cause the operation of the surface lines along temporary structures on the city's property to the ferry house. Progress has already been made in this direction and I hope to be able to report soon that an arrangement has been concluded for the temporary accommodation of this traffic until the permanent ferry house and approach is finished.

Thereupon the following dismissal order was issued:

### DISMISSAL ORDER No. 849. November 20, 1908.

An order of the Commission, No. 755, having been made herein on the 2d day of October, 1908, directing a hearing on October 8, 1908, in the matter of the discontinuance of the Thirty-ninth Street Ferry-Bay Ridge Avenue Line, and said hearing having been duly had before the Commission on October 8, 1908, October 16, 1908, October 23, 1908, October 30, 1908, and November 6, 1908, and it appearing from testimony taken at said hearing, on which opinion was rendered by Commissioner Bassett, that the restoration of said Thirty-ninth Street Ferry-Bay Ridge Avenue Line would not be warranted by the number of passengers accommodated by said line,

Now, on motion made and duly seconded, it is

Ordered, That said complaint be, and the same hereby is, dismissed, and that this order be filed in the office of the Commission.

**Brooklyn Heights Railroad Company.—Inadequate service on the crosstown line at Manhattan avenue bridge over Newtown creek.**

Complaint Order No. 691.  
 Hearing Order No. 724.  
 Opinion of Counsel.  
 Opinion of Commissioner Bassett.  
 Final Order No. 845.  
 Extension Order, Case 845.  
 Rehearing Order, Case 845.  
 Opinion of Commissioner Bassett.  
 Final Order, Case 845.

**COMPLAINT OF BARTLEY J. WRIGHT  
 against**

**BROOKLYN HEIGHTS RAILROAD COMPANY.**

Complaint Order No. 691 (see form, note 1) issued August 25th.

The company answered on September 1st, stating that the service was reasonable and that it would be impracticable to extend the Crosstown service to Long Island City during the greater period of the day because of interference on the bridge caused by frequent opening of the draw. The following hearing order, "on motion of the Commission," was issued:

In the Matter

of the

Hearing on motion of the Commission as to the regulations, practices, equipment, appliances and service of the BROOKLYN HEIGHTS RAILROAD COMPANY, in the respects hereinafter mentioned.

HEARING ORDER No. 724.  
 September 18, 1908.

"Inadequate service on the crosstown line at Manhattan Avenue bridge, over Newtown creek."

*It is hereby ordered,* That a hearing be had on the Thirtieth day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances and service of the Brooklyn Heights Railroad Company upon and near its line known as the Crosstown Line upon and across the bridge known as the Manhattan Avenue bridge, over Newtown creek, and upon and near the approaches to said bridge, in the city and State of New York, in respect to the transportation of persons in said city are unjust, unreasonable, improper or inadequate; and if it be so found, then to inquire and determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following will be just, reasonable, adequate and proper, and whether changes therein and additions thereto in the particulars following ought reasonably to be made, in order to promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of passengers, namely:

1. Whether said company should be directed and required to operate its cars on its line known as the "Crosstown Line" across Manhattan Avenue bridge, over Newtown creek, at all hours, so as to afford through service on said line across said bridge, at all hours.

2. Whether said company should be directed and required to provide electrical power for the propelling of its cars upon said bridge and upon the track and approaches to said bridge at all times, to the end that there shall be no "dead section" of said line, caused by the opening of the draw of said bridge, or otherwise.

3. To determine the number of cars that should be operated upon said line and the frequency of their operation or the number of seats that should be furnished within a given time or times and past a given point or points upon said line, in order reasonably to accommodate the traffic transported by said company or offered for transportation to it, upon said line.

4. Whether other changes, improvements and additions in and to the regulations, practices, equipment, appliances or service of said Brooklyn Heights Railroad Company upon said line and across said bridge ought reasonably to be made, for the purposes aforesaid.

5. If it be found that the changes, improvements and additions above mentioned or any of them are such as ought reasonably to be made, then to determine the particulars and extent thereof and the time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable. It is further

*Ordered*, That the said Brooklyn Heights Railroad Company be given at least eight (8) days' notice of said hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held September 30th and October 7th and 8th.

OPINION OF COUNSEL.

October 28, 1908.

Hon. EDWARD M. BASSETT, *Commissioner*:

SIR:—Referring to your oral request that I inform you concerning the franchise rights of the Brooklyn Heights Railroad Company upon and across the Manhattan avenue bridge over Newtown creek, and from the northerly side of Newtown creek to the Thirty-fourth street ferry, and supplementing the report already made to you by Mr. Chamberlain, I beg to advise you as follows:

By chapter 823 of the Laws of 1866, the Legislature authorized and empowered the Nassau Railroad Company of the city of Brooklyn to construct, maintain and operate, with horse power only, a railroad in and upon certain streets, avenues and places, route and routes specified in the act, a copy of which was attached to Mr. Chamberlain's report. The route, in so far as is material here, is given in the act as follows:

"Beginning at the ferries at the foot of West Second street, near the depots of the Long Island and Flushing Railroad Companies; at Hunter's Point in Queens county, thence by double track along West Second street and the turnpike, across the bridge over Newtown creek, leading to Union avenue, thence along Union avenue, Orchard street, Van Cott avenue and Fifth street to Broadway, thence along Broadway and Rush street to Kent avenue, thence along Kent avenue and Clymer and Taylor streets to a point where Washington avenue when built and extended across the Wallabout bay will meet or connect with either of said streets, thence along Washington avenue, Montgomery street and Franklin avenue to the town of Flatbush, with a continuation from Washington avenue along Park avenue and Flushing avenue to Raymond and Navy streets, thence along Raymond and Navy streets to Willoughby street, thence along Willoughby street to the City Hall and the County Court House on Joralemon street, thence along Joralemon and Court streets to Atlantic street, and thence along Atlantic street to the South Ferry, thence returning by the same route or streets and avenues to the junction of Broadway and Fourth street, thence along Fourth street and North Ninth street to Fifth street, and thence along Fifth street, Van Cott avenue, Orchard street, Union avenue, and across said bridge over Newtown creek and along said turnpike and West Second street to the ferries, the point or place of beginning; with the switches, turnouts, and sidings actually necessary and proper for the operation of such road."

The Nassau Railroad Company was incorporated March 3, 1865, under the General Railroad Act of 1850.

By chapter 576 of the Laws of 1868, the Nassau Railroad Company and another company (the Greenpoint and Williamsburgh Railroad Company) were consolidated under the name of Brooklyn City, Hunter's Point and Prospect Park Railroad Company. By chapter 453 of the Laws of 1872 the name "Brooklyn City, Hunter's Point and Prospect Park Railroad Company" was changed to "Brooklyn Crosstown Railroad Company." The properties of this company were subsequently leased to the Brooklyn City Railroad Company, and were held under lease by that company for some time, as were also the properties of the following companies:

Bushwick Railroad Company; Calvary Cemetery, Greenpoint and Brooklyn Railroad Company; New Williamsburgh and Flatbush Railroad Company; Greenpoint and Lorimer Street Railroad Company; Grand Street and Newtown Railroad Company.

On October 31, 1890, the Brooklyn City Railroad Company having acquired the capital stock of these companies filed a certificate thereof in the office of the Secretary of State, whereupon these properties merged into and became a part of the Brooklyn City Railroad Company.

The Brooklyn City Railroad Company thus succeeded to all the rights of the companies merged therewith.

On January 11, 1892, the Common Council of the city of Brooklyn granted to the Brooklyn City Railroad Company permission to change its motive power from horse power to electric power.

On February 14, 1893, the properties of this company were leased for 999 years to the Brooklyn Heights Railroad Company, by which company they are now operated.

With reference to the right of the company to operate cars over the present bridge, I would call attention to section 110 of the Railroad Law, which is as follows:

"Should any street surface railroad company have crossed any bridge as a part of its route for a period of more than five years and should any other bridge be substituted therefor at any time, such company shall have the right to cross such substituted bridge and to lay and use railway tracks thereon for the transit of its cars and to make all changes and extensions of its route subject to all the provisions of this act, as the convenient operation of its cars and public convenience may require."

Regarding operation through Borden avenue to and from the Thirty-fourth street ferry. It will be noted that the grant of April 26, 1866, to the Nassau Company covers this route. I am informed that the "West Second Street" mentioned in the grant is now Borden avenue. For a number of years a horse car service was operated over this line, the line being called the "Crosstown Annex Line," and being a double track line .161 miles in length. I find this line mentioned in the Railroad Reports beginning with 1897, under the name mentioned. The report for 1902 shows the line still in operation, but the reports for 1903 and succeeding years show the line "not operated." It would appear, therefor, that the line was discontinued in 1902 or 1903. I am informed by the railroad company that the line was discontinued at the time of the construction of the new bridge over Newtown creek. I have been unable to ascertain just when the operation of the line was commenced. The Railroad Reports prior to 1897 make no mention of this as a separate line.

The abandonment by the corporation of the portion of its line mentioned did not determine or forfeit its franchise. Such abandonment operated only as a cause of forfeiture of which the People alone could take advantage.

Trelford v. Coney Island and Brooklyn Railroad Company, 6 App. Div. 204.

People v. Broadway Railroad Company, 126 N. Y. 29.

Paige v. Schenectady Railway Company, 178 N. Y. 102, 114.

My conclusion is that the Brooklyn Heights Railroad Company has a valid franchise over the route described in the act of the legislature and across the new bridge over Newtown creek. It has a valid franchise in Borden avenue between the ferries at the foot of that avenue and the point where the line originally turned aside to cross the old bridge over Newtown creek. The rights of the company in this avenue have not been forfeited. However, the present bridge is much higher and longer than the old bridge and is elevated above and extends beyond Borden avenue so that it would be impossible to operate the line in the manner contemplated by the act mentioned. In order to operate the line as a continuous line additional franchise rights would have to be procured between the northerly terminus of the bridge and Borden avenue. Of course, a shuttle service could be put on in Borden avenue, but this probably would not pay, as the line would not connect with the main part of the Crosstown line. I suggest, therefore, that the company be advised to apply to the Commission for leave to abandon the portion of the line lying in Borden avenue. In any event, in view of the changed conditions, the company probably should not be required to operate this portion of its franchise.

Respectfully yours,

(Signed) GEO. S. COLEMAN,  
Counsel to the Commission.

#### OPINION OF COMMISSION.

(Adopted November 20, 1908.)

COMMISSIONER BASSETT:—

Two lines of surface cars operated by the Brooklyn Heights Railroad Company proceed on Manhattan avenue across Newtown creek to Long Island City. Newtown creek is a navigable stream and the United States government requires the operation of a lift bridge in order to accommodate navigation. The constant opening of this bridge will disarrange any regular surface car schedule. The company has endeavored to meet this condition by operating the Greenpoint line throughout the day and additional service provided by shuttle cars during rush hours across the bridge. This service causes a great deal of complaint because of the infrequent and irregular operation and the constant change of cars. The remedy proposed allows the two said lines, both of which are important long distance lines, to stop on the Brooklyn side of the bridge, with the exception that the Crosstown line proceeds to Long Island City in the evening hours. This allows the maintenance of a more regular headway on these important lines. The shuttle service is enlarged and improved. Connections will be made between the shuttle cars and the cars of the through lines. The details of this plan are sufficiently given in the order.

514 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Correspondence is now going on between the Commission and the Department of Bridges in an endeavor to bring about less frequent opening of the lift bridge.

Thereupon the following final order was issued:

ORDER No. 845.  
November 20, 1908.

This matter coming on upon the report of the hearing had herein on the 30th day of September, 1908, and on the 8th day of October, 1908; and it appearing that the said hearing was had by and before the Commission pursuant to hearing order No. 724, dated September 18, 1908, and returnable on the 30th day of September, 1908, at 2:30 o'clock in the afternoon; and it appearing that said hearing order No. 724 was issued upon motion of the Commission after service on the Brooklyn Heights Railroad Company of complaint order No. 691 issued upon the complaint of Bartley J. Wright, Esq., and after the answer of said railroad company to said complaint had been filed with the Commission; and it appearing that said order was duly served upon said Brooklyn Heights Railroad Company and that such service was by it duly acknowledged; and it appearing that said hearing was had by and before the Commission on the matters embraced in said complaint and answer and order for hearing on September 30, 1908, and on October 8, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and Arthur N. Dutton, Esq., appearing for said railroad company; and testimony having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that the regulations, practices, equipment, appliances and service of the Brooklyn Heights Railroad Company upon and near its line known as the Crosstown Line upon and across the bridge known as the Manhattan Avenue bridge (or Vernon Avenue bridge) over Newtown creek and upon and near the approaches to said bridge in the city and State of New York in respect to the transportation of persons in said city are improper and inadequate in the respects hereinafter mentioned and that changes therein and additions thereto in the particulars following ought reasonably to be made in order to promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of passengers; and it having been made to appear after the proceedings on said hearing that it will be reasonable to require that the provisions of this order be put into effect by said company within the period of time hereinafter mentioned, and that such periods of time would be reasonable and adequate for that purpose.

Now, therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,  
*It is ordered:*

1. That said company discontinue the present through operation of the Greenpoint Line across said bridge and establish the northerly terminus of said line at Manhattan avenue and Commercial street;

2. That between the hours of 8 P. M. and 6 A. M. daily, said company operate all cars of its Crosstown Line through to Fourth street, Long Island City;

3. That between the hours of 6 A. M. and 8 P. M. daily, said company install and maintain across said bridge between Box street and Fourth street a shuttle service with a scheduled headway of not less than six (6) minutes in such a manner as to accommodate passengers transferring from the Greenpoint Line and from the Crosstown Line;

4. That the dead section of trolley wire created by the opening of the draw of said bridge be provided by said company with electric power at all times;

5. That said company comply with the requirements of subdivisions 1, 2 and 3 of this order on December 3, 1908, and that said company comply with the requirements of section 4 of this order on or before December 23, 1908;

6. That this order shall take effect as hereinbefore provided and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

*Further ordered,* That the said company be, and hereby is, authorized to make the changes in routes as hereinbefore ordered upon filing and publishing as provided by Tariff Circular No. 1 at least five days in advance of the said December 3, 1908, a supplement which shall bear the following notation "Issued under special permission of the P. S. C.-1 Order No. 845 of November 20, 1908."

*Further ordered,* That said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District within five (5) days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

CASE NO. 845, EXTENSION ORDER.  
December 1, 1908.

An order, No. 845, having been made herein on or about the 20th day of November, 1908, directing the Brooklyn Heights Railroad Company (1) to make certain changes and improvements in the service on its crosstown line at Manhattan avenue bridge over Newtown creek by December 3, 1908, schedules of such changes to be filed with the Commission at least five days prior to that date, (2) to provide the dead section of trolley wire created by the opening of the draw of said bridge with electric power at all times, such provision to be made before December 23,

1908; and the said Brooklyn Heights Railroad Company having on November 25, 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

**Ordered.** That the time within which the Brooklyn Heights Railroad Company shall make the changes and improvements above mentioned be, and the same hereby is, extended to and including December 18, 1908, and the time within which said company shall provide the dead section of trolley wire created by the opening of the draw of said bridge be, and the same hereby is, extended to and including January 7, 1909.

Upon application of the company the following rehearing order was issued:

CASE NO. 845, REHEARING ORDER WITH STAY.

December 15, 1908.

An order in Case No. 845 having been made and filed herein on the 20th day of November, 1908, under and pursuant to an order for a hearing, No. 724, made on December 18, 1908, and thereafter having been duly served upon the Brooklyn Heights Railroad Company, and in and by said order said company having been required (1) to make certain changes and improvements in the service on its crosstown line at Manhattan avenue bridge over Newtown creek by December 3, 1908, schedules of such changes to be filed with the Commission at least five days prior to that date, (2) to provide the dead section of trolley wire created by the opening of the draw of said bridge with electric power at all times, such provision to be made before December 23, 1908; and the time of the said company within which to comply with section (1) having been extended to and including December 18, 1908, and the time within which to comply with section (2) having been extended to and including January 7, 1909, by the terms of Extension Order adopted December 1, 1908, and the said Brooklyn Heights Railroad Company having, on December 9, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in said order, and sufficient reason for said rehearing having been made to appear, it is

**Ordered.** That said request for a rehearing be granted, and that the said rehearing upon the matters contained in said order in Case No. 845, entered and filed on November 20, 1908, be held on the 18th day of December, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the order in Case 845, whether the original order, or any part thereof, is in any respect unjust or unwise, and whether the said order in Case No. 845 should be abrogated, changed, or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes and modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

**Further ordered.** That the said Brooklyn Heights Railroad Company be given at least one day's notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

**Further ordered.** That the time of the Brooklyn Heights Railroad Company within which to comply with the terms of said order in Case No. 845 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held December 18th.

OPINION OF COMMISSION.  
(Adopted December 29, 1908.)

COMMISSIONER BASSETT:—

Two lines of surface cars operated by the Brooklyn Heights Railroad Company proceed on Manhattan avenue across Newtown creek to Long Island City. Newtown creek is a navigable stream and the United States government requires the operation of a lift bridge in order to accommodate navigation. The constant opening of this bridge will disarrange any regular surface car schedule. The company has endeavored to meet this condition by operating the Greenpoint line throughout the day and additional service provided by shuttle cars during rush hours across the bridge. This service causes a great deal of complaint because of the infrequent and irregular operation and the constant change of cars. The remedy proposed allows the two said lines, both of which are important long distance lines, to stop on the Brooklyn side of the bridge, with the exception that the Crosstown line proceeds to Long Island City in the evening hours. This allows the maintenance of a more regular headway on these important lines. The shuttle service is enlarged

## 516 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

and improved. Connections will be made between the shuttle cars and the cars of the through lines. The details of this plan are sufficiently given in the order. Correspondence is now going on between the Commission and the Department of Bridges in an endeavor to bring about less frequent opening of the lift bridge.

Thereupon the following final order was issued:

### CASE NO. 845, ORDER AFTER REHEARING.

December 29, 1908.

This matter coming on upon the report of the hearing had herein on the 30th day of December, 1908, and it appearing that said rehearing was had by and before the Commission, pursuant to an order for rehearing in Case No. 845, dated December 15, 1908, and returnable on December 18, 1908; and it appearing that said order for rehearing was issued at the request of said railroad company after the service on said company of Final Order No. 845, dated November 20, 1908, and after service on said company of extension order in Case No. 845, dated December 1, 1908; and it appearing that said order for rehearing was duly served upon said Brooklyn Heights Railroad Company; and it appearing that said rehearing was had by and before the Commission on the 18th day of December, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission and Arthur N. Dutton, Esq., appearing for said railroad company; and testimony having been taken upon said rehearing; and the Commission being of the opinion after such rehearing and after a consideration of the facts, including those arising since the making of said Final Order No. 845, that said Final Order No. 845 is not unjust or unwarranted, but that a slight modification of certain portions thereof as hereinafter provided may be advisable and that said order should be changed and modified accordingly.

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
Ordered, That said Final Order No. 845 be and the same hereby is modified  
*nunc pro tunc* as of the 20th day of November, 1908, so as to read as follows:

### CASE NO. 845, FINAL ORDER.

This matter coming on upon the report of the hearing had herein on the 30th day of September, 1908, and on the 8th day of October, 1908; and it appearing that the said hearing was had by and before the Commission pursuant to hearing order No. 724, dated September 18, 1908, and returnable on the 30th day of September, 1908, at 2:30 o'clock in the afternoon; and it appearing that said hearing order No. 724 was issued upon motion of the Commission after service on the Brooklyn Heights Railroad Company of complaint order No. 691, issued upon the complaint of Bartley J. Wright, Esq., and after the answer of said railroad company to said complaint had been filed with the Commission; and it appearing that said order was duly served upon said Brooklyn Heights Railroad Company and that such service was by it duly acknowledged; and it appearing that said hearing was had by and before the Commission on the matters embraced in said complaint and answer and order for hearing on September 30, 1908, and on October 8, 1908, before Commissioner Bassett, presiding. Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission and Arthur N. Dutton, Esq., appearing for said railroad company; and testimony having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that the regulations, practices, equipment, appliances and service of the Brooklyn Heights Railroad Company upon and near its line known as the Crosstown Line upon and across the bridge known as the Manhattan avenue bridge (or Vernon avenue bridge) over Newtown creek and upon and near the approaches to said bridge in the city and State of New York, in respect to the transportation of persons in said city are improper and inadequate in the respects hereinafter mentioned, and that changes therein and additions thereto in the particulars following ought reasonably to be made in order to promote the security and convenience of the public, and in order to secure adequate service and facilities for the transportation of passengers; and it having been made to appear after the proceedings in said hearing that it will be reasonable to require that the provisions of this order be put into effect by said company within the period of time hereinafter mentioned, and that such periods of time would be reasonable and adequate for that purpose.

Now, therefore, on motion of George S. Coleman, Esq., counsel to the Commission.

*It is ordered:*

1. That said company discontinue the present through operation of the Greenpoint line across said bridge and establish the northerly terminus of said line at Manhattan avenue and Commercial street;
2. That between the hours of 10 P. M. and 6 A. M. daily, said company operate all cars of its Crosstown line through to Fourth street, Long Island City.
3. That between the hours of 6 A. M. and 10 P. M. daily, said company install and maintain across said bridge, between Box street and Fourth street a shuttle service, with a scheduled headway of not less than six (6) minutes in such a manner as to accommodate passengers transferring from the Greenpoint line and from the Crosstown line.
4. That the dead section of trolley wire created by the opening of the draw of said bridge be provided by said company with electric power at all times;
5. That said company comply with the requirements of subdivisions 1, 2 and 3 of this order on or before the 9th day of January, 1909, and that said company

comply with the requirements of subdivision 4 of this order on or before the 11th day of February, 1909.

8. That this order shall take effect as hereinbefore provided and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

7. That the said company be and hereby is authorized to make the change in routes as hereinbefore ordered upon filing and publishing, as provided by tariff circular No. 1, at least five (5) days in advance of said January 9, 1909, a supplement which shall bear the following notation: "Issued under special permission of the P. S. C.—1 Order No. 845, of November 20, 1908."

8. That said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District on or before January 5, 1909, whether the terms of this order are accepted and will be obeyed.

### **Brooklyn, Queens County and Suburban Railroad Company.—**

#### **Service on Metropolitan avenue line.**

Hearing Order No. 464.  
Opinion of Commissioner Bassett.  
Final Order No. 605.  
Rehearing Order No. 628.  
Final Order No. 683.

#### **In the Matter of the**

Hearing on the motion of the Commission on the question of improvements in and additions to the service of the Brooklyn, Queens County & Suburban Railroad Company.

ORDER FOR HEARING  
No. 464.  
May 8, 1908.

#### **Metropolitan Avenue Line.**

*It is hereby ordered,* That a hearing be had on the 21st day of May, 1908, at 2.30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, Borough of Manhattan, city and State of New York, to inquire whether the regulations, practices and service of the Brooklyn, Queens County and Suburban Railroad Company in respect to transportation of persons in the First District on the Metropolitan avenue line, including the branch running through Grand street, are unjust, unreasonable, improper or inadequate, and whether the said Brooklyn, Queens County and Suburban Railroad Company does not run cars enough, or with sufficient frequency, or upon a reasonable time schedule, reasonably to accommodate passenger traffic transported by it or offered for transportation to it, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of the said Brooklyn, Queens County and Suburban Railroad Company be increased, supplemented and changed in the following manner, that is to say:

1. By operating daily including Sunday over every point on the Metropolitan avenue line, including the branch running through Grand street, a sufficient number of cars in each direction past any point of observation to provide during every thirty minute period of the day or night a number of seats at least ten per cent. (10%) in excess of the number of passengers at that point: the number of cars passing any point to be, however, never less than three in each half hour in each direction, except that between the hours of 12 midnight and 5 A. M. the number of cars shall never be less than one car per hour in each direction.

2. By making such other and further changes in the schedule, route or manner of operating cars on the Metropolitan avenue line, including the branch running through Grand street, as may be just and reasonable.

And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn, Queens County and Suburban Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing such company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held May 21st, 27th, June 2d and 11th.

\*[More people would be incommoded than advantaged by operating the Metropolitan avenue cars in Brooklyn through lower Metropolitan avenue instead of through Grand street.]

\* See footnote, page 9.

## OPINION OF COMMISSION.

(Adopted June 26, 1908.)

## COMMISSIONER BASNETT:—

This investigation and hearing was had upon the complaint of the Board of Aldermen of the city of New York. Following is their resolution:

*Resolved*, That the Public Service Commission for the First District be and hereby is requested to investigate the conditions under which the cars of the Metropolitan avenue division of the Brooklyn Rapid Transit Company are operated, with the further request that the said company be compelled to operate cars at shorter intervals than now employed.

It was disclosed at the first three hearings that the conditions complained against involve a difference of opinion between residents and property owners along the lower part of Metropolitan avenue and thence along the lower part of Grand street on the question of how through cars should operate to the Grand street ferries. Formerly the Metropolitan avenue surface line operated from St. John's Cemetery through Metropolitan avenue to Kent avenue and thence south to the ferries. About eight years ago the through Metropolitan avenue cars were turned into Grand street at the Newtown Creek bridge, proceeding thence to the ferries by Grand street and lower Metropolitan avenue was cared for by a shuttle service. The operating company considers that the majority of its patrons are better served by the present method. It appears that lower Metropolitan avenue almost parallels Grand street and residents living between these two streets can take the cars at Grand street fully as conveniently as on Metropolitan avenue. Users of the line residing beyond Newtown Creek bridge prefer to have their cars go through Grand street, inasmuch as that is the business street of the locality. If the Metropolitan avenue cars were taken away from Grand street the service on that important street would be cut in half. Residents on Metropolitan avenue desiring to have the old route replaced say that they do not desire to rob Grand street of its cars, but only desire that the former route and service on Metropolitan avenue shall be restored. This, however, would double the service on Metropolitan avenue east of Newtown Creek bridge, and the inspections of the Commission do not show that such an increase is necessary. The aggravating circumstance of the situation is that the shuttle service on lower Metropolitan avenue is so infrequent that it is practically unused. To lessen the headway to twenty minutes during the day would probably not substantially increase its usefulness. Indeed, this was done by the company during the progress of the hearing without materially increasing its patronage.

There is general complaint in the locality north of Grand street that while many lines coming from the south pass over Williamsburg Bridge to Delancey street, no lines coming from the north afford a similar service. On this account it is likely that in the near future it may be advisable to re-route these cars so that they will operate through Metropolitan avenue as far as Marcy avenue, then to Grand street, instead of via Grand street west of Newtown creek, as at present. This subject, however, must be taken up in conjunction with service to Greenpoint, and it was deemed by all concerned that this remedy could not be adequately covered or settled in this hearing. My conclusion is that many more people would be incommoded than advantaged by operating the Metropolitan avenue cars through lower Metropolitan avenue instead of through Grand street.

The other subject of complaint: i. e., adequacy of service on the Metropolitan avenue division, was not pressed by the citizens who appeared. This portion of the investigation elicited little or no interest on the part of the residents or officials. The only evidence produced was from the transit inspection department, and this showed that service was fairly adequate on week days but often inadequate on Sundays. The Sunday travel in this locality presents a perplexing problem. Queens county has many cemeteries to which people go in funeral parties. Sometimes they come in carriages to Long Island City and take the surface cars from that point. There is no doubt that this kind of traffic is difficult to manage, but the evidence shows that the company permits an unnecessary and constant amount of overcrowding on pleasant Sundays on this line. The reason why complaints are not more frequent is probably because the users of the line are constantly changing. I think the present Sunday schedule is inadequate and that it is right that the company should operate on each Sunday between the hours of 9 A. M. and 8 P. M. over every

# ORDERS OF THE COMMISSION ISSUED IN 1908.

519

**point on the Metropolitan avenue line a sufficient number of cars in each direction past any point of observation to provide during every thirty-minute period a 10 per cent. excess of seats over passengers at that point, but the number of cars to pass any point shall never be less than three in each half hour in each direction.**

The following final order was issued:

## FINAL ORDER NO. 605.

June 26, 1908.

This matter coming on upon the report of the hearing had herein on the 21st day of May, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made May 8, 1908, and returnable on May 21, 1908, and that said order was duly served upon the Brooklyn, Queens County and Suburban Railway Company, and that said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on May 21, 1908, and by adjournment duly had on May 27, 1908, and by adjournment had on June 2, 1908, and by adjournment duly had on June 11, 1908, at all of which sessions Mr. Commissioner Bassett presided. Arthur DuBols, Esq., appearing for the Commission and Arthur N. Dutton, Esq., appearing for the Brooklyn, Queens County and Suburban Railway Company.

Now, it being made to appear after the proceedings upon said hearing that the regulations and service of the Brooklyn, Queens County and Suburban Railway Company in respect to the transportation of persons in the First District has been and is, in certain respects, unreasonable, improper and inadequate in that the said railroad company does not, on Sundays, run cars enough or with sufficient frequency or on a reasonable time schedule reasonably to accommodate the passenger traffic transported by or offered for transportation to it, and it appearing that changes and improvements in the regulations and service of the said company, as duly set forth, are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public,

Now, therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered*, That the service of the Brooklyn, Queens County and Suburban Railway Company, on its Metropolitan Avenue Line, be supplemented and changed in the following manner, that is to say:

By operating on Sundays over every point on the Metropolitan Avenue Line, between the hours of 9 A. M. and 8 P. M. a sufficient number of cars in each direction past any point of observation to provide during every thirty minute period a number of seats at least 10 per cent. in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than three in each half hour in each direction, between the hours of 9 A. M. and 8 P. M.

*And it is further ordered*, That this order shall take effect on July 10, 1908, and shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearing and action thereon by the Commission, in respect of anything herein prescribed or in respect of any thing covered by the order for hearing herein, prior to the expiration of said period of two years.

*And it is further ordered*, That before July 1, 1908, the Brooklyn, Queens County and Suburban Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

## REHEARING ORDER No. 628.

July 10, 1908.

An order, No. 605, having been made and filed herein on the 26th day of June, 1908, under and pursuant to an order for a hearing, No. 464, made May 8, 1908, and thereafter having been duly served upon the Brooklyn, Queens County and Suburban Railway Company, the same to take effect on July 19, 1908, and in and by said order the said Brooklyn, Queens County and Suburban Railway Company having been required to notify this Commission on or before the 1st day of July, 1908, whether the terms of said order, No. 605, are accepted and will be obeyed, and the said Brooklyn, Queens County and Suburban Railway Company having, on June 30, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in said order, No. 605, and sufficient reason for said rehearing having been made to appear, it is

*Ordered*, That said request for rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 605, entered and filed on June 26, 1908, be held on the 16th day of July, 1908, at 10 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the Order No. 605, whether the original order, No. 605, or any part thereof is in any respect unjust or unwise, and whether the said Order No. 605 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Brooklyn, Queens County and Suburban Railway Company be given at least five days' notice of such hearing by service upon it either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered*, That the time of the said Brooklyn, Queens County and Suburban Railway Company within which to comply with the terms of said Order No. 605 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearings held July 17th and 22d.

\*The following final order was issued:

ORDER AFTER REHEARING No. 683.

August 21, 1908.

This matter coming on upon the report of the rehearing of Order No. 605 had herein on July 16, 1908, and it appearing that said rehearing was held by and pursuant to an order of this Commission, No. 628, made July 10, 1908, and returnable July 16, 1908, and that said order was duly served on the Brooklyn, Queens County and Suburban Railroad Company and that said service was by it duly acknowledged, and that said rehearing was held by and before the Commission on the matters in said order for rehearing specified on July 17, 1908, and by adjournment duly had on July 22, 1908, before Commissioner McCarroll, presiding, Arthur N. Dutton, Esq., appearing for the Brooklyn, Queens County and Suburban Railroad Company and Arthur DuBois, Esq., appearing for the Commission, and the said Brooklyn, Queens County and Suburban Railroad Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses, and proof having been taken,

Now, after the proceedings upon the said rehearing and after consideration of the facts, including those facts arising since the making of the order, the Commission being of the opinion that Order No. 605 made June 26, 1908, should be changed and modified in certain particulars.

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, That Order No. 605, made June 26, 1908, be and the same hereby is changed and modified to read as follows:

FINAL ORDER No. 605.

This matter coming on upon the report of the hearing had herein on the 21st day of May, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made May 8, 1908, and returnable on May 21, 1908, and that said order was duly served upon the Brooklyn, Queens County and Suburban Railroad Company and that said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on May 21, 1908, and by adjournment duly had on May 27, 1908, and by adjournment had on June 2, 1908, and by adjournment duly set forth on June 11, 1908, at all of which sessions Mr. Commissioner Bassett presided, Arthur DuBois, Esq., appearing for the Commission and Arthur N. Dutton, Esq., appearing for the Brooklyn, Queens County and Suburban Railroad Company.

Now, it being made to appear after the proceedings upon said hearing that the regulations and service of the Brooklyn, Queens County and Suburban Railroad Company in respect to the transportation of persons in the First District has been and is, in certain respects, unreasonable, improper and inadequate in that the said railroad company does not, on Sundays, run cars enough or with sufficient frequency or on a reasonable time schedule reasonably to accommodate the passenger traffic transported by or offered for transportation to it, and it appearing that changes and improvements in the regulation and service of the said Company, as duly set forth, are such as are just, reasonable, adequate and proper and ought reasonably to be made in order to promote the convenience of the public.

Now, therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is

*Ordered*, That the service of the Brooklyn, Queens County and Suburban Railroad Company, on its Metropolitan Avenue Line, be supplemented and changed in the following manner, that is to say:

By operating on Sundays over every point on the Metropolitan Avenue Line, between the hours of 9 A. M. and 8 P. M. a sufficient number of cars in each direction past any point of observation to provide during every sixty-minute period a number of seats at least 10 per cent in excess of the number of passengers at that point; the number of cars passing any point to be, however, never less than three in each half hour in each direction, between the hours of 9 A. M. and 8 P. M.

*And it is further ordered*, That this order shall take effect on August 21st, and

shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearing and action thereon by the Commission, in respect to anything herein prescribed or in respect to anything covered by the order for hearing herein, prior to the expiration of said period of two years.

*And it is further ordered,* That before August 28, 1908, the Brooklyn, Queens County and Suburban Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### **Brooklyn, Queens County and Suburban Railroad Company.—**

Conditions at Cypress Hills transfer point, Crescent street and Jamaica avenue.

Complaint Order No. 515.

Hearing Order No. 587.

Opinion of Commissioner Bassett.

Final Order No. 855.

**COMPLAINT OF THE TWENTY-EIGHTH WARD  
BOARD OF TRADE, UNION COURSE BOARD  
OF TRADE**

*against*

**BROOKLYN, QUEENS COUNTY AND SUBURBAN  
RAILROAD COMPANY.**

Complaint Order No. 515 (see form, note 1) issued May 22d.

Hearing Order No. 587 (see form, note 3) issued June 19th.

Hearings were held October 16th and 23d.

#### **OPINION OF COMMISSION.**

(Adopted November 20, 1908.)

**COMMISSIONER BASSETT:**—

The complainants in this proceeding seek a remedy for the inconvenience suffered by surface car passengers at Cypress Hills. The peculiarities of this point have been a constant source of annoyance to the public and perplexity to the operating companies. Jamaica avenue following the course of the old Jamaica turnpike proceeds from Brooklyn to Jamaica, skirting the southern slope of the range of hills that form the backbone of Long Island. Cemeteries largely occupy these slopes before the county line is reached. If there was no elevated railroad surface cars would operate between the Brooklyn Bridge and Jamaica and between the Williamsburg Bridge and Jamaica, the two lines joining in East New York. The Cypress Hills branch of the Brooklyn Union Elevated railroad, however, carrying passengers both from the Brooklyn Bridge and Williamsburg Bridge terminates at a point in Jamaica avenue directly south of Cypress Hills Cemetery. The traffic carried by the elevated road prevents the operation of the Jamaica avenue surface line as an entity. The reason for this is because most surface car passengers when going to the city from Jamaica, Richmond Hill, Morris Park, Brooklyn Hills, Woodhaven and Union Course transfer at Cypress Hills to the elevated railroad in order to go west more quickly. The complainants ask that through cars shall operate from Williamsburg through to Jamaica. They would admit, however, that additional cars should be placed on Jamaica avenue, operating between Cypress Hills and Jamaica. It was pointed out on the hearings that the insertion of through cars from Williamsburg to Jamaica among the more numerous cars needed to ply between Cypress Hills and Jamaica would produce an irregularity of operation that would embarrass instead of help the situation. One of the main causes of complaint has been the fact that passengers reaching Cypress Hills from Williamsburg by the service now operated need to walk 300 or 400 feet to take the surface car proceeding from Cypress Hills to Jamaica. The construction of an additional switch near the elevated railroad station would serve to obviate this particular difficulty. Therefore, while I am unwilling to recommend that through service should be operated between Williamsburg and Jamaica, I am of the opinion that the situation will be greatly

helped if a new switch and cross-over is installed. Let an order for the construction of such a switch and cross-over be prepared.

Thereupon the following final order was issued:

**TWENTY-EIGHTH WARD BOARD OF TRADE,  
UNION COURSE BOARD OF TRADE,**  
*Complainants,*

**against**

**BROOKLYN, QUEENS COUNTY AND SUBURBAN  
RAILROAD COMPANY,**  
*Defendants.*

FINAL ORDER No. 855.  
November 20, 1908.

"Conditions at Cypress Hills Transfer Point,  
Crescent Street and Jamaica Avenue."

This matter coming on upon the complaint of Twenty-Eighth Ward Board of Trade and Union Course Board of Trade, dated May 11, 1908, and the answer thereto of the Brooklyn, Queens County and Suburban Railroad Company, dated June 2, 1908, and received June 3, 1908, and the report of the hearing had herein on October 16, and on October 23, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission No. 587, made and entered June 19, 1908, and returnable October 16, 1908, and that said order for hearing was duly served upon the said Brooklyn, Queens County and Suburban Railroad Company, and that said hearing was held by and before the Commission on the matters in said complaint, said answer and said order specified on the said 16th day of October, 1908, and by adjournment duly had on October 23, 1908, before Hon. Edward M. Bassett, Commissioner, presiding, Arthur DuBois, Esq., Assistant Counsel, appearing for the Commission, Alfred Furman, Esq., and Cornelius M. Sheehan, Esq., appearing for the Twenty-eighth Ward Board of Trade and Harry B. Engelhardt, Esq., appearing for the Allied Civics Association, and evidence being taken at said hearing.

Now, it being made to appear by the said complaint, answer and proceedings on said hearing, that the regulations, practices, equipment, appliances and service of the said company, in respect to the transportation of persons within the First District are in certain respects unreasonable, improper and inadequate, and it appearing that changes in the regulations, practices, equipment, appliances and service of said company, as hereinafter set forth, are just, reasonable and proper and ought reasonably to be put in force, observed and used in the transportation of persons in the First District, and it appearing that certain additions to the tracks and equipment should reasonably be made in the manner hereinafter specified, in order to promote the security and convenience of the public and in order to secure adequate service and facilities and that the said additions, improvements and changes ought reasonably to be made within the time hereinafter specified,

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered*, That an additional cross-over or switch be constructed on Jamaica avenue, between the present cross-over near Euclid avenue and Crescent avenue and that a plan showing in detail the location of this cross-over or switch be submitted to the engineers of the Public Service Commission for their approval, not later than December 5, 1908.

*Further ordered*, That within forty days after the approval of the plan for the construction of this cross-over or switch by the engineers of the Public Service Commission, the construction of said cross-over or switch be completed and used in the operation of the Jamaica avenue service between Crescent avenue and New York city.

*Further ordered*, That the provisions of this order take effect immediately.

*Further ordered*, That the Brooklyn, Queens County and Suburban Railroad Company notify the Public Service Commission within five days after service of this order whether the terms of this order are accepted and will be obeyed.

### Brooklyn Union Elevated Railroad Company.—Operation of elevated trains over the Brooklyn Bridge and at its terminal.

In the Matter  
of the

Inquiry into the operation of elevated trains by  
the BROOKLYN UNION ELEVATED RAILROAD  
COMPANY, over the Brooklyn Bridge and at its  
terminal.

HEARING ORDER No. 298.  
March 3, 1908.

*Resolved*, That the Public Service Commission for the First District, pursuant to the provisions of the Public Service Commissions Law, institute an inquiry as

to the operation of elevated trains of the Brooklyn Union Elevated Railroad Company over the Brooklyn Bridge and at its terminals, and a hearing thereon be held on March 6, 1908, at 2 o'clock and at such further times to which the same may be adjourned.

Hearings held March 6th, 10th, 12th and 13th.

**Brooklyn Union Elevated Railroad Company.—Running of open cars in inclement weather.**

COMPLAINT OF JAMES HAYZELL  
against

BROOKLYN UNION ELEVATED RAILROAD COMPANY.

Complaint Order No. 479 (see form, note 1) issued May 12th.

**Brooklyn Union Elevated Railroad Company.—Opening of stairway leading to easterly end of "island" platform at the Manhattan terminal of Brooklyn Bridge.**

Hearing Order No. 558.  
Opinion of Commissioner Bassett.

In the Matter  
of the

Hearing on motion of the Commission as to regulations, practices, equipment, and service of the BROOKLYN UNION ELEVATED RAILROAD COMPANY.

HEARING ORDER No. 558.  
June 9, 1908.

"Opening of stairway leading to easterly end of "Island" platform at Manhattan Terminal of Brooklyn Bridge."

*It is hereby ordered,* That a hearing be had on the 18th day of June, 1908; at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Brooklyn Union Elevated Railroad Company at the Manhattan terminal of the Brooklyn Bridge, in respect to the transportation of persons, freight or property within the State are unjust, unreasonable, unsafe, inadequate or improper, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances, or service in the particulars following at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on line of said company, and also to inquire whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight, or property, namely:

Whether said Brooklyn Union Elevated Railroad Company should be directed to open the stairway leading from the easterly end of the so-called "Island" platform used in the transportation of persons upon its Lexington avenue line at the Manhattan terminal of the Brooklyn Bridge, for the accommodation of passengers wishing to ascend to the said platform or descend therefrom.

Whether said company should be directed to make other changes in its property, equipment, or appliances, or in its regulations, practices, and service at said Lexington avenue platform.

And if any such changes, improvements, and additions be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Union Elevated Railroad Company be given at least six days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearing held June 18th.

\*[To open the easterly stairway leading to the Lexington avenue elevated trains of Brooklyn Bridge during rush hours would cause confusion.]

OPINION OF COMMISSION.

(Adopted June 23, 1908.)

COMMISSIONER BASSETT:—

This hearing was based upon complaints received from persons using the Rose street and William street stairways at the Manhattan terminal of the Brooklyn Bridge who desired to take Lexington avenue elevated trains. It appears that such passengers are caused to proceed along the mezzanine floor to one of the westerly stairways leading to the Island platform. They assert that if they could take the nearest stairway leading to this platform which is now kept closed in the evening rush hours they would not have to work their way against the tide of travel for a considerab'e distance. An examination of all of the facts shows that if the easterly stairway were open during the evening rush hours there would be greater confusion on the Island platform. It is much better to have all confusion possible avoided on the platform where the cars are taken.

The complainants did not appear at the hearing although they were notified.

In as much as this hearing was not held as a complaint hearing it is not necessary that any order of dismissal shall be entered.

**Brooklyn Union Elevated Railroad Company.— Local service and express stops on the Brighton Beach line.**

Hearing Order No. 614.  
Opinion of Commissioner McCarroll.  
Dismissal Order No. 671.

In the Matter  
of the

Hearing on motion of the Commission on the question of the regulations, practices, appliances, and service of the BROOKLYN UNION ELEVATED RAILROAD COMPANY.

"Local service and express stops on the Brighton Beach Line."

HEARING ORDER No. 614.  
June 29, 1908.

*It is hereby ordered,* That a hearing be had on the 10th day of July, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances and service of the Brooklyn Union Elevated Railroad Company in respect to the transportation of persons and property in the First District upon its Brighton Beach line are unreasonable, unsafe, improper or inadequate as hereinafter set forth, and whether changes, additions, and improvements thereto ought reasonably to be made in the manner below set forth in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of persons and property, and to determine whether a change, addition, and improvement in the regulations, practices, equipment, appliances and service of said company, as hereinafter set forth, are such as will be just, reasonable, safe, adequate, and proper and ought reasonably to be made:

Whether the Brooklyn Union Elevated Railroad Company should increase the number of station stops made by express trains upon its Brighton Beach line;

And to inquire whether said Brooklyn Union Elevated Railroad Company runs local trains enough or with sufficient frequency or upon a reasonable time schedule, reasonably to accommodate the passenger traffic transported by it or offered for transportation to it upon its Brighton Beach line;

\* See footnote, page 9.

**And if** such be found to be the fact, then to determine whether it is reasonably necessary, in order to accommodate and transport the said traffic transported or offered for transportation, and whether it is and will be just, reasonable, proper and adequate, to direct that the local service of the said Brooklyn Union Elevated Railroad Company upon its Brighton Beach line be increased, supplemented, or changed.

That at the same time and place a hearing be had to inquire whether Order No. 296 entered and filed in the office of the Public Service Commission for the First District on the 28th day of February, 1908, directed against the Brooklyn Union Elevated Railroad Company in respect to service upon its Brighton Beach line should be abrogated, changed, or modified.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid then to determine the details of such changes, improvements, and additions, and to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

**Further ordered.** That the said Brooklyn Union Elevated Railroad Company be given at least eight days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

**Hearings held July 10th and 17th.**

**OPINION OF COMMISSION.**

(Adopted August 7, 1908.)

**COMMISSIONER McCARROLL:**—

It appears from testimony that the Brooklyn Union Elevated Railroad Company operates elevated trains over the so-called Brighton Beach line from the Manhattan end of the Brooklyn Bridge to the Culver terminal at Coney Island, with certain routes thereon that do not run the entire length. An enumeration of these, with the class of stops, is necessary in order to understand the whole situation.

For the regular service, the company operates trains running from Manhattan for the entire length of the route. These trains during rush hours do not make certain stops on Fulton street, between Franklin avenue and Boerum place, which in a measure gives an express service for the residents of Flatbush. During non-rush hours, these trains stop at all stations. For the beach travel the company has established a so-called through express service, starting from Manhattan and stopping only at Boerum place, Franklin avenue, Prospect park and then Sheepshead Bay and the beach stations beyond.

In addition, the company maintains what may be termed a shuttle express service between Prospect Park and Brighton Beach stations, which makes only one stop, at Sheepshead Bay. This service is maintained in order to accommodate patrons brought to the Prospect Park station on three different trolley lines that loop back at this station.

Certain residents of Flatbush have made complaint asking that this Commission order the company to stop its through express trains at Church avenue, Newkirk avenue and Kings Highway. Church avenue and Kings Highway are express stations; that is to say, during the reconstruction of the Brighton Beach line these two stations were built with island platforms, so that trains using the two middle tracks may stop at these island platforms. The request that the express trains stop at Church avenue was not insisted upon, and it seemed to be agreed on the part of the various witnesses that the situation would be seriously interfered with if express trains were required to stop at Church avenue.

A number of residents of Flatbush testified that on the local service there is no substantial cause for complaint, as, almost without exception, seats can be obtained on such trains. There was some complaint, however, and the fact was admitted by the company, that the interval in non-rush hours between local trains has been increased from seven and one-half to ten minutes. This change it appears came about following a proceeding instituted by this Commission for the purpose of improving the service on the Brighton Beach line at a time when the company was running two and three-car trains on a seven and one-half minute interval. This has now been changed so that trains of four or more cars are operated at intervals of ten minutes.

## 526 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

In the absence of serious complaint because of inadequate service on the local trains, the only other item of complaint seems to be that the company having established two express stations does not now stop at these two stations the trains which do run as expressses.

Mr. Arthur N. Dutton went at some length into an explanation as to why it was inadvisable for the Commission to order the company to stop such trains at these stations. It appears that the express trains are not run during rush hours, the time when additional and fast service is most needed, but that they are run solely to accommodate the beach travel, which is not at its maximum during the regular rush hours. It appeared further from Mr. Dutton's testimony that if these trains were required to stop at the two stations, it would be necessary for the company to make an entire rearrangement of the leading platforms in the Manhattan end of the Brooklyn Bridge. At the present time the so-called express trains are loaded from one of the front platforms and the local trains are loaded from the south platform nearest City Hall, with the result that the beach travel is separated entirely from what may be known as the permanent residential travel. If the express trains were to stop at the two stations in order to accommodate the permanent residents, it would be necessary to have both local and express trains starting from the same platform in the Manhattan terminal of the Brooklyn Bridge in order that an expectant patron might take the first train that came along. To arrange for both classes to leave the same platform, would make it necessary for one of the lines of trains which now load from the south rear pocket to be shifted to another platform,—a disarrangement of the present loading accommodations which have been worked out after considerable experimentation and not justified in view of the few weeks remaining of the summer season.

It is my opinion, therefore, that the complaint in this proceeding should be dismissed for it does not appear that the service as at present rendered to the residents of Flatbush is inadequate, and that moreover requiring the express trains to stop at these two stations would disarrange the entire elevated service going to Brooklyn to the increased convenience of a very small number of persons compared with the total travel.

Several of the witnesses dwelt on the fact that the express service as now operated is pushed to such an extent by the company that there is at times a total disarrangement of the local schedule, and this complaint would appear to be justified. The attention of the company should accordingly be called to this matter, with instructions to make every effort to maintain the regular local schedule.

I cannot refrain from adding that it is very unfortunate that the residents of portions of Brooklyn served by the Brighton Beach line should not secure the increased service that was expected by the construction of a four-track route through their section of the city, and particularly when it is considered that one-half of the expense of this improvement was borne by the city at large. The company should be urged to make application to proper authorities at the earliest moment to the end that it may secure additional trackage between the northern end of the present four-track construction and the lower portion of Brooklyn, from which travel is distributed to Manhattan, either over the Brooklyn Bridge, or through the subway or on the ferries.

Thereupon the following dismissal order was issued:

### DISMISSAL ORDER No. 871.

August 7, 1908.

An order of the Commission, No. 614, having been made herein on the 29th day of June, 1908, directing a hearing on July 10, 1908, in the matter of local service and express stops on the Brighton Beach line of the Brooklyn Union Elevated Railroad Company, and it appearing from testimony taken at said hearing, on which report was made by Commissioner McCarroll, that the service at present rendered is not inadequate, and that requiring express trains to stop at Church avenue, Newkirk avenue and Kings Highway would disarrange the entire elevated service going to Brooklyn to the increased convenience of a very small number of persons compared with the local travel.

Ordered, That said complaint be, and the same hereby is, dismissed

**Brooklyn Union Elevated Railroad Company; Brooklyn Heights Railroad Company and Nassau Electric Railroad Company.— Operation of trains and surface cars at Sixty-fifth street and Third avenue terminal, Brooklyn.**

Complaint Order No. 375.  
Extension Order No. 396.  
Extension Order No. 431.  
Extension Order No. 441.  
Hearing Order No. 532.  
Opinion of Commissioner Bassett.  
Final Order No. 597.

COMPLAINT OF THE WEST END BOARD OF TRADE  
*against*

**BROOKLYN UNION ELEVATED RAILROAD COMPANY, BROOKLYN  
HEIGHTS RAILROAD COMPANY, NASSAU ELECTRIC RAILROAD  
COMPANY.**

Complaint Order No. 375 (see form, note 1) issued March 27th.  
Extension Order No. 396 (see form, note 2) issued April 3d.  
Extension Order No. 431 (see form, note 2) issued April 24th.  
Extension Order No. 441 (see form, note 2) issued April 28th.  
Hearing Order No. 532 (see form, note 3) issued May 26th.  
Hearing held June 5th.

OPINION OF COMMISSION.  
(Adopted June 23, 1908.)

**COMMISSIONER BASSETT:**—

This complaint covered a large number of items, and inasmuch as it involved three separate operating companies, it was difficult for the complainants to furnish proof that was not somewhat fragmentary. The situation at the southern terminal of the Fifth Avenue elevated railroad is a serious one, and has for a long time been the subject of a great deal of complaint. The fundamental trouble is the difficulty of operating three separate trolley car lines so that they will properly bring passengers to and take them away from the elevated terminal. The slightest delay on one of the trolley lines causes passengers to wait for elevated railroad connections. It would seem obvious that placing more cars on the trolley lines, so that one or more cars would always be in readiness at the terminal, would afford a solution, but the practice shows that if two trolley cars are waiting so that they start at the same time, all of the passengers crowd into the first car and leave the second car nearly empty. It is quite impossible to adjust the movement of the elevated trains to the needs of the three trolley lines, because the Brooklyn Bridge operation requires that elevated trains run as nearly on the schedule as possible. This means that the operation of the trolley cars must be adapted to the movement of elevated trains. There is a preponderance of evidence in my opinion that the three operating companies do not take sufficient pains to adjust the movement of trains and trolley cars to the needs of the people. Trolley cars will often be started just before an elevated train reaches the station, and sometimes the elevated trains are started when a delay of a fraction of a minute would accommodate a large number of people who have just landed. The companies have given assurances that greater attention will be given to these points. It is plain that these points are of a nature that cannot well be covered by a specific order, because no order of the commission or rule of the company can make surface cars operate exactly on a schedule. The Commission hesitates to order additional surface cars unless there is substantial overcrowding. The headway on the three trolley lines is now as small as it is for similar conditions in other parts of the city.

recommend that in the early fall a more careful inspection be made of the operation of cars at this point, with a view to finding some fair method of bringing about better co-ordination between the trolley lines and the elevated trains.

The first item of the complaint is against the elevated railroad because its schedule does not permit of proper connections with the three surface car lines at this station. This item is dismissed because it is not right for the elevated schedule to be subjected to the uneven character of surface car operation.

The second complaint is that during non-rush hours there are not enough cars on each elevated train. I recommend that a final order direct that no more two-car trains shall be operated on the elevated railroad to and from this terminal between the morning and evening rush hours.

The third item of complaint is that the Third Avenue surface car line does not operate a schedule that connects with the elevated trains at Sixty-fifth street station. The proof shows that the fault is not in the schedule, but the impossibility of operating the cars strictly on the schedule. It should be said, however, that at some periods of the day the schedule does not contemplate a connection of every trolley car with a train, the reason being the lack of traffic to warrant a trolley car for every elevated train. This item of the complaint should be dismissed.

The fourth complaint is because of failure to operate the Bay Ridge avenue surface line on a schedule connecting with the elevated trains. This item should be dismissed for the same reason.

The fifth item of complaint requests that on Saturdays between 1 p. m. and midnight the cars on the Bay Ridge avenue line should meet every train. No evidence was produced to support this contention, and the complaint in this regard should be dismissed.

The sixth item of the complaint is to the effect that the Sunday service on the Bay Ridge avenue line should be increased. No evidence was produced on this point, and this item should therefore be dismissed.

The seventh complaint is to the effect that transfers should be issued from the Bay Ridge avenue line to the Fifth avenue surface line at Bay Ridge and Fifth avenue. These lines are operated by different companies. The Commission has not yet taken steps to compel transfers between different operating companies, and although both of these lines are operated by companies in the Brooklyn Rapid Transit system, the same situation is presented here that is presented at about two hundred other points in Brooklyn. Transfers are now given at this point to passengers going to the Thirty-sixth street station of the elevated road, and vice versa. This, however, does not cover the object of the complainants, who desire that additional transfers shall be given so that people can take either the Bay Ridge avenue line or the Fifth avenue line in either direction. This subject may be taken up in the future when fuller evidence is produced, but the evidence produced on this hearing does not attempt to cover the subject of the establishment of a through rate between different companies. This item of the complaint should be dismissed.

The eighth item of complaint is that sufficient surface cars are not operated on the Eighty-sixth street line. No proof to show this was given, and the complaint in this regard should be dismissed.

The ninth item of complaint is that the cars on the Eighty-sixth street line are not operated on a schedule to connect with the elevated trains. This should be dismissed for the reasons given under Item 3.

The tenth item is a request that on Saturdays, between 1 p. m. and midnight the surface cars on the Eighty-sixth street line should meet every elevated train. This should be dismissed for the reasons given under Item 5.

The eleventh item requests that on Sundays additional service should be given on the Eighty-sixth street line. No proof to support this request other than the general desire that there should be a trolley car on every line to meet every train was given. This item should be dismissed.

The twelfth item requests that a single starter should be in charge of both surface cars and elevated trains. Inasmuch as there are three operating companies and there is no proof that the duties of the four lines could be performed by one man, it would seem unwise to issue an order compelling the roads to have one man do the work that two are now doing. If accidents should happen by reason of improper service, the companies could point to the order of the Commission directing them to employ only one man. There appears to be no doubt, however, that

the two starters now employed should work in co-operation with each other, and assurances to this effect were given by the representative of the companies at the close of the hearings.

The necessary dismissal of so many of the items of the complainant's complaint casts no reflection whatever upon the association that has brought these matters to the attention of the Commission. Their evidence showed that the management of this terminal is unsatisfactory, but the difficulty is how to afford a remedy by issuing specific orders. Orders will not make trolley cars run exactly on a schedule. But future observations by the residents and by the Commission will disclose whether the operating companies are in good faith endeavoring to minimize the discomfort at this station and the above mentioned dismissals are made without prejudice to taking the matter up anew on a later occasion.

Thereupon the following final order was issued:

<b>WEST END BOARD OF TRADE,</b> <i>Complainant.</i> <i>against</i>	}
<b>BROOKLYN UNION ELEVATED RAILROAD COMPANY, BROOKLYN HEIGHTS RAILROAD COMPANY and NASSAU ELECTRIC RAILROAD COMPANY.</b> <i>Defendants.</i>	
Under Order for Hearing No. 532, made May 26, 1908.	FINAL ORDER No. 597. June 23, 1908.

This matter coming on upon the complaint of West End Board of Trade, bearing date the 20th day of March, 1908, and the answers thereto of Brooklyn Union Elevated Railroad Company, Brooklyn Heights Railroad Company and Nassau Electric Railroad Company, and on order for hearing having been made on said complaint and answers, being Order No. 532 of this Commission, made the 28th day of May, 1908, and returnable on the 5th day of June, 1908, at 2:30 p. m., and said order having been duly served upon each of said defendants and said hearing having been duly held on the 5th day of June, 1908, at 2:30 p. m., before Hon. Edward M. Bassett, Commissioner, Mr. D. B. Seaver, second vice-president of the West End Board of Trade appearing for the complainant, and Mr. Arthur N. Dutton, superintendent of transportation of each of the companies appearing for said companies, and Grosvenor H. Backus, Esq., assistant counsel to the Commission, attending, and the Commission being of the opinion after said hearing that the Brooklyn Union Elevated Railroad Company ought to operate more cars on its line between Sixty-fifth street and Park row, Manhattan, in the manner hereinafter provided, in order to promote the convenience of the public and in order to secure adequate service or facilities for the transportation of passengers.

*It is ordered.* That the Brooklyn Union Elevated Railroad Company, without reducing the number of trains per hour which was provided for in its schedule of trains on its Fifth avenue line, between Sixty-fifth street and Park row, in effect on the 5th day of June, 1908, shall operate at least three cars in each train on said line between the morning and evening rush hours on each week day, and

*It is further ordered.* That except as hereinbefore provided said complaint of the West End Board of Trade against the Brooklyn Union Elevated Railroad Company and against the Brooklyn Heights Railroad Company and the Nassau Electric Railroad Company be, and it is, dismissed, without prejudice to the right of the Commission to make such further order or orders for hearings as it may deem necessary upon any of the matters contained in said complaint, and

*It is hereby further ordered.* That this order shall take effect immediately and remain in force until modified by the further order of this Commission, and

*It is further ordered.* That each of said companies notify the Commission in writing within five days after the service of this order whether its terms are accepted and will be obeyed.

**Brooklyn Union Elevated Railroad Company.— Through service to Coney Island on the Brighton Beach Division.**

**COMPLAINT OF SHEEPSHEAD BAY BOARD OF TRADE**  
*against*

**BROOKLYN UNION ELEVATED RAILROAD COMPANY.**

Complaint Order No. 760 (see form, note 1) issued October 6th.

The company answered October 16th. A copy of the answer was sent the complainant who replied on November 27th expressing dissatisfaction with the answer. The matter is pending.

**Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company.** — Service south of One Hundred and Seventeenth street.

In the Matter  
of the

Hearing on motion of the Commission on the question of improvements in and additions to the service of the **Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company.**

**DISCONTINUANCE ORDER**  
No. 589.

June 23, 1908.

"Service south of One Hundred and Seventeenth street."

This matter coming on upon the report of the hearing had herein on the 23d day of December, 1907, and, by adjournment, on the 28th day of December and the 30th day of December, 1907, and it appearing that the said hearing was held pursuant to an order of this Commission, No. 149 adopted December 11, 1907, on motion of the Commission, and that service of the said order was duly made upon the Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company, and that said hearing was held by and before the Commission on the matters contained in the hearing order above mentioned on the 23d day of December, 28th day of December, and 30th day of December, 1907, before Mr. Commissioner Malbie presiding, Arthur Du Bois, assistant counsel, appearing for the Commission, Daniel W. Patterson for the Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company, and testimony having been taken at said hearing, and it having been made to appear after proceedings upon said hearing that the routes of operation of cars by the said Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company south of One Hundred and Seventeenth street have been changed since the institution of the proceedings herein.

Now, on motion made and duly seconded, it is  
*Resolved*, That proceedings herein be, and the same hereby are, discontinued. It is further

*Resolved*. That this order shall be without prejudice to an order for further or additional hearings and action thereon by this Commission in respect to any of the matters contained in the Hearing Order No. 149, herein or the proceedings thereon.

**Interborough Rapid Transit Company.** — Service on Second Avenue Elevated between 1 A. M. and 5 A. M.

Hearing Order No. 374.  
Opinion of Commissioner Eustis.  
Dismissal Order No. 426.

In the Matter  
of the

Hearing on motion of the Commission on the question of improvements in and additions to the service and equipment of the **INTERBOROUGH RAPID TRANSIT COMPANY.**

**HEARING ORDER NO. 374**  
March 27, 1908.

"Service on Second Avenue Elevated Road between 1 A. M. and 5 A. M.

*It is hereby ordered*, That a hearing be had on the 14th day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be

**adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, equipment, appliances, and service of the Interborough Rapid Transit Company in respect to transportation of persons in the First District are unjust, unreasonable, improper or inadequate, in that no cars are run between the hours of 1 A. M. and 5 A. M. on any day upon the Second Avenue Elevated road of said company, and if such be found to be the fact, then to determine the number of cars that should be operated and the frequency of their operation, or the number of seats that should be furnished, within a given time or times and past a given point or points, upon said road between the hours above mentioned, in order reasonably to accommodate and transport the traffic offered for transportation on said road.**

**And if any such changes, improvements and additions be found to be such as ought to be made as aforesaid, then further to determine what period will be a reasonable time within which the same should be directed to be executed.**

**All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.**

**Further ordered, That the said Interborough Rapid Transit Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.**

Hearing held April 14th.

OPINION OF COMMISSION.

(Adopted April 21, 1908.)

**COMMISSIONER EUSTIS:**

In the matter of the complaint of the Board of Aldermen against the Interborough Rapid Transit Company for not running cars on the Second avenue elevated between the hours of 1 and 5 A. M., which was referred to me for investigation, I beg to report:

I have held a hearing upon this matter, and at that hearing no one representing the complainants appeared, notwithstanding they had due notice. The railroad company appeared by their manager and counsel, and the proof produced was in effect that very little, if any, travel exists along the line of the Second avenue between the hours named, and that even during the hour between 12 and 1 A. M., if any, outsiders are carried along the line of Second avenue, and as this section is only one block removed from Third avenue, where an all night's service is maintained, it would seem an unnecessary service to require the company to run trains on this line between 1 and 5 A. M., and especially so as no one was sufficiently interested to appear upon the hearing in support of the complaint.

I, therefore, recommend that the complaint be dismissed.

Thereupon the following dismissal order was issued:

DISMISSAL ORDER No. 426.

April 21, 1908.

This matter coming on upon the report of the hearing had herein on the 14th day of April, 1908, and it appearing that said hearing was held pursuant to an order of this Commission, No. 374, made the 27th day of March, 1908, upon motion of the Commission, at the instance and request of the Board of Aldermen of the city of New York, and upon the complaint of said Board of Aldermen, and that said order was duly served upon the Interborough Rapid Transit Company, and that such service was by said company duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 14th day of April, 1908, before Mr. Commissioner Eustis presiding. Harry M. Chamberlain, Esq., appearing for the Public Service Commission for the First District, and Alfred E. Mudge, Esq., and Alfred A. Gardner, Esq., appearing for said Interborough Rapid Transit Company, and no one appearing on behalf of the Board of Aldermen, complainants, although said board had due notice of said hearing, and proof having been taken upon said hearing, and it appearing therefrom that little, if any, travel exists along the line of Second avenue between 1 A. M. and 5 A. M., between which hours complainants desire trains to be run upon said line, and that even between the hours of 12 o'clock midnight and 1 A. M. very few people patronize this line, and it also appearing from said proof that this line is only one block removed from Third avenue where an all-night service is maintained, and that service on said Second avenue line between the hours of 1 A. M. and 5 A. M. would be an unnecessary service.

Now, on motion of George S. Coleman, Esq., counsel to the Commission, it is

**Ordered, That the said complaint be and the same hereby is dismissed, and that this order be filed in the office of the Commission; and it is further**

**Ordered, That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by said complaint, and order or the proceedings thereon.**

**Interborough Rapid Transit Company.— Extension of Broadway express service to Kingsbridge and of Broadway local service to Dyckman street.**

Hearing Order No. 408.  
Opinion of Commissioner Eustis.  
Dismissal Order No. 556.

In the Matter  
of the

Hearing on motion of the Commission on the question of improvements in and additions to the service of the INTERBOROUGH RAPID TRANSIT COMPANY.

HEARING ORDER No. 408.  
April 10, 1908.

" Extension of Broadway express service to Kingsbridge, and of Broadway local service to Dyckman street."

*It is hereby ordered,* That a hearing be had on the 22d day of April, 1908, at 11 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Interborough Rapid Transit Company in respect to the transportation of passengers upon its Broadway line of the Subway division within the First District, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances and service of said company as hereinafter set forth are such as will be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

1. Whether all express trains upon the Broadway line of the Subway division of said Interborough Rapid Transit Company now running only as far as Dyckman street should be made to run through to Kingsbridge station at Two Hundred and Thirtieth street;

2. Whether all local trains upon the Broadway line of the Subway division of said company now running only as far as the One Hundred and Thirty-seventh street station upon said line should be made to run through to Dyckman street.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said Interborough Rapid Transit Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held April 22d, 28th and May 4th.

OPINION OF COMMISSION.

(Adopted June 5, 1908.)

COMMISSIONER EUSTIS:—

Various hearings have been held in this matter, and representatives of the Washington Heights Taxpayers' Association produced a large amount of testimony in the shape of statements and exhibits giving the number of passengers that are compelled to transfer from the local to the express trains at One Hundred and

Thirty-seventh street, and also showing that at times the Kingsbridge express would be crowded on its southerly trip at One Hundred and Fifty-seventh street.

Upon all the proofs submitted I find that the present service on the Broadway express line north of One Hundred and Thirty-seventh street is adequate, except for a short time, not to exceed an hour, night and morning when some of the express trains have passengers standing between One Hundred and Fifty-seventh and One Hundred and Thirty-seventh streets.

In so far as the complaint relates to the service north of Dyckman street, requesting that the railroad company be compelled to run its Dyckman street trains through to Kingsbridge and to Van Cortlandt when the terminal station at that point is finished, I find that on an average not over 25 per cent of the seats in the Kingsbridge trains are occupied north of Dyckman street, and at no time during the day are over 75 per cent of the seats occupied, and to grant this request of the complainants would be to impose an unnecessary burden and expense upon the railroad company.

I find that it would be a great convenience to some people if the One Hundred and Thirty-seventh street local trains could be extended, but that the convenience would not be sufficient to warrant the Commission in putting this additional burden upon the railroad, when it is shown by the evidence that the other trains are adequate during almost the entire twenty-four hours of the day. And that north of One Hundred and Forty-fifth street the railroad company has but two tracks, and if it were to extend the local trains to Dyckman street the operation of the line would be made more difficult and dangerous.

I am therefore of the opinion that at the present time it would be unwise to direct the railroad company to satisfy the complaint. I would therefore recommend that the complaint be dismissed.

Thereupon the following dismissal order was issued:

**DISMISSAL ORDER No. 556.**

June 5, 1908.

This matter coming on upon the report of the hearing had herein on April 22, 1908, and May 4, 1908, and it appearing that said hearing was had pursuant to Order for Hearing No. 408, dated April 10, 1908, and returnable on April 22, 1908, and it appearing that said order was issued upon motion of the Commission, after the complaint of the Washington Heights Taxpayers' Association and in accordance with the request contained in said complaint, and it appearing that the said order was duly served upon said Interborough Rapid Transit Company and that such service was by said company duly acknowledged, and that said hearing was had by and before the Commission on the matters in said complaint and order specified, on the 22d day of April, 1908, and the 4th day of May, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and Reginald P. Bolton, Esq., and John Whalen, Esq., appearing for the complainant, and Alfred A. Gardner, Esq., Counsel for the Interborough Rapid Transit Company, appearing for said company, and it having been made to appear after the proceedings on said hearing that the service of said Interborough Rapid Transit Company in the respects complained of is not unreasonable or inadequate and that it would not be just or reasonable to order the extensions of service desired by the complainant,

Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is Ordered, That the said complaint be and the same hereby is dismissed and that this order be filed in the office of the Commission, and it is further

Ordered, That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by said order or the proceedings thereon.

**Interborough Rapid Transit Company.— Skipping Eighty-fourth street station on the Third avenue elevated.**

Hearing Order No. 647.

Opinion of Commissioner Eustis.

Discontinuance Order No. 654.

**COMPLAINT OF FRANK SCHAFER  
against**

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Hearing Order No. 647 (see form, note 3) issued July 21st.

Hearing held July 28th.

534 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

OPINION OF COMMISSION.

(Adopted August 3, 1908.)

COMMISSIONER EUSTIS:

Complainant appeared at the hearing and stated that he was satisfied that the condition complained of had been greatly improved. Mr. Hedley stated that the company's positive orders were that no two consecutive trains should skip the same station and that the company would not retain in its employ employees who persistently disregarded their rules to that effect. I recommend that the complaint be dismissed and submit herewith order dismissing the complaint.

Thereupon the following discontinuance order was issued:

FRANK SCHAFER,  
against  
INTERBOROUGH RAPID TRANSIT COMPANY.  
Defendant.

Complainant,

DISCONTINUANCE ORDER  
No. 654.  
August 3, 1908.

"Skipping 84th Street station on the Third Avenue  
Elevated Road."

This matter coming on upon a report of the hearing had herein on the 28th day of July, 1908, and it appearing that said hearing was held pursuant to Order No. 817 of this Commission, dated July 21, 1908, and returnable on the 28th day of July, 1908, for the purpose of bringing on for hearing certain matters suggested by the complaint of Frank Schaffer with respect to the alleged practice of the Interborough Rapid Transit Company of skipping Eighty-fourth street station upon its Third avenue road, and it appearing that said hearing was had by and before said Commission on matters embraced in said complaint and in said order specified, on the 28th day of July, 1908, Mr. Commissioner Eustis presiding, Mr. Alfred E. Mudge, of counsel appearing for the Interborough Rapid Transit Company, and no one appearing for said complainant, and at said hearing, in a letter dated July 23d, the complainant herein having expressed satisfaction with the improvement in service furnished at the Eighty-fourth street station by said Interborough Rapid Transit Company,

Now, on motion made and duly seconded, it is  
*Resolved*, That the proceedings herein be, and the same hereby are, discontinued. And it is further

*Resolved*, That this action of the Commission shall be without prejudice to the issuance of an order for further or additional hearings or action thereon by the Commission, in respect to any of the matters covered by said complaint or said order for hearing or the proceedings thereon.

Long Island Electric Railway Company.—Service and equipment on Liberty avenue line.

Hearing Order No. 406.  
Final Order No. 506.

In the Matter  
of the

Hearing on motion of the Commission on the question of improvements in and additions to the service and equipment of the Long Island Electric Railway Company.

HEARING ORDER No. 406.  
April 10, 1908.

"Liberty Avenue Line."

*It is hereby ordered*, That a hearing be had on the 22d day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough

of Manhattan, city and State of New York, to inquire whether the regulations, equipment and appliances of the Long Island Electric Railway Company in respect to transportation of persons and property in the First District are unsafe, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public or employees, or in order to secure adequate service and facilities for the transportation of passengers and property, and if such be found to be the fact, then to determine whether a change, addition, and improvement of regulations, equipment, appliances and service of said Company, as hereinafter set forth, is such as would be just, reasonable, safe, adequate and proper and ought reasonably to be made to promote the security and convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers and property on its Liberty avenue line, that is to say:

1. That the said Long Island Electric Railway Company maintain a uniform headway in the operation of cars on said line.

2. That the said railway company renew or replace illegible destination signs, and conspicuously display said signs.

3. That the railway company thoroughly clean each car every day.

4. That the said railway company thoroughly wash and disinfect each car every third day.

5. That the said railway company overhaul and repair each car so that when completed they shall be in first class condition. And if any such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Long Island Electric Railway Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held April 22d and 30th.

The following final order was issued:

FINAL ORDER No. 506.

May 19, 1908.

An order, known as Order No. 406, having been duly made by the Commission on April 10, 1908, directing that a hearing be had to inquire whether the regulations, equipment and appliances of the Long Island Electric Railway Company in respect to transportation of persons and property in the First District are unsafe, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner set forth in said order to promote the security or convenience of the public or employees, or in order to secure adequate service and facilities for the transportation of passengers and property, and if such be found to be the fact then to determine whether changes, additions or improvements in regulations, equipment, appliances and service of said company are such as would be just, reasonable, safe, adequate and proper and ought reasonably to be made to promote the security and convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers and property upon its Liberty avenue line, and said order having been duly served on the Long Island Electric Railway Company on the 11th day of April, 1908, and said service having been duly acknowledged by said company, and said hearing having been duly had in pursuance thereof before the Commission on the 22d day of April, 1908, and on the 30th day of April, 1908, Hon. Edward M. Bassett, Commissioner, presiding, Mr. Emanuel Gonzales Bullard appearing for certain property owners, Mr. Van Vechten Veeder appearing for the Long Island Electric Railway Company, and Mr. Henry H. Whitman, Assistant Counsel to the Commission, attending, and it appearing in the opinion and judgment of the Commission that the regulations, equipment and appliances of the Long Island Electric Railway Company in respect to transportation of persons and property in the First District are unsafe, improper and inadequate, and that the repairs, improvements and changes hereinafter directed ought reasonably to be made in order to promote the security and convenience of the public and employees of said company and to secure adequate service and facilities for the transportation of persons or property, and that the time hereinafter given within which to make such repairs, improvements, changes and additions is reasonable,

*It is ordered*:

1. That the said Long Island Electric Railway Company maintain a regular headway for the operation of cars on its said line from the 30th day of May, 1908, and until the further order of the Commission.

2. That the said Long Island Electric Railway Company renew or replace all illegible destination signs and conspicuously display said signs on both ends of all cars from the 30th day of May, 1908, and until the further order of the Commission.

3. That the Long Island Electric Railway Company thoroughly clean each car in operation on its said line daily from the 30th day of May, 1908, and until the further order of the Commission.

4. That the said Long Island Electric Railway Company thoroughly clean and disinfect each car on its said line every fourth day from the 30th day of May, 1908, and until the further order of the Commission.

5. That the said Long Island Electric Railway Company, from the 30th day of May, 1908, and prior to the 15th day of September, 1908, overhaul and repair the bodies of all cars on its said line so that when completed their condition shall be substantially new, having safe, proper and adequate car bodies in every respect.

*And it is further ordered,* That said Long Island Electric Railway Company notify this Commission in writing within five days after the service of this order whether its terms are accepted and will be obeyed.

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**Metropolitan Street Railway Company.— Failure to operate cars on the One Hundred and Forty-fifth street crosstown line after midnight because of storing of cars.**

COMPLAINT OF JOHN G. BENNETT

*against*

METROPOLITAN STREET RAILWAY COMPANY  
AND ADRIAN H. JOLINE AND DOUGLAS  
ROBINSON, RECEIVERS.

Complaint Order No. 710 (see form, note 1) issued September 14th.

The company answered September 11th stating that the work on the car barns had progressed to such an extent that it would be possible thereafter to store fewer cars on the street and to operate cars between Eighth Avenue and Broadway after midnight and that cars would be so operated.

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**Metropolitan Street Railway Company.— Withdrawal of service on Avenue A between Fourteenth street and Twenty-third street.**

COMPLAINT OF THE EIGHTEENTH WARD TAX-PAYERS' ASSOCIATION OF THE CITY OF NEW YORK

*against*

METROPOLITAN STREET RAILWAY COMPANY  
AND ADRIAN H. JOLINE AND DOUGLAS ROBINSON, ITS RECEIVERS.

Complaint Order No. 809 (see form, note 1) issued October 30th.

The answer of the company was received November 4th stating that it possessed no franchise to operate electric cars on Avenue A north from Fourteenth street.

**Nassau Electric Railroad Company.—South Brooklyn Railway Company.**—Operation of freight cars on Marcy avenue.

Complaint Order No. 734.  
Extension Order No. 763.  
Hearing Order No. 838.

**COMPLAINT OF JAMES J. HUNTER ET AL.**

*against*

**THE NASSAU ELECTRIC RAILROAD COMPANY,  
SOUTH BROOKLYN RAILWAY COMPANY.**

Complaint Order No. 734 (see form, note 1) issued September 25th.

Extension Order No. 763 (see form, note 2) issued October 6th.

Hearing Order No. 838 (see form, note 3) issued November 17th.

Hearings were held November 30th, December 7th and 14th.

**New York and Queens County Railway Company.—Reduction of running time between Jamaica and Flushing and through cars between Jamaica and Long Island City by way of Flushing.**

GEORGE W. BARTHOLF, <i>against</i> NEW YORK AND QUEENS COUNTY RAILWAY COMPANY,	<i>Complainant,</i> <i>Defendant.</i> Under Order for Answer No. 132, made December 4, 1907.	ORDER No. 248. February 7, 1908.
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This matter coming on upon the complaint of George W. Bartholf, dated the 22d day of November, 1907, and upon the order of the Commission, No. 132, made the 4th day of December, 1907, and upon the answer of New York and Queens County Railway Company, dated December 13, 1907, and it not appearing to the Commission that there are reasonable grounds for the charges in said complaint, Now, on motion of George S. Coleman, Esq., Counsel to the Commission, it is Ordered, That said complaint be and the same hereby is dismissed; and it is Further ordered, That this order shall be without prejudice to the making and issuing of any further order or orders for hearings upon any of the matters referred to in said complaint and answer.

**New York and Queens County Railway Company.—Failure to run cars to the Corona terminus from Long Island City.**

Complaint Order No. 773.  
Hearing Order No. 833.  
Opinion of Commissioner Bassett.  
Final Order, Case 833.

COMPLAINT OF THE CORONA IMPROVEMENT  
ASSOCIATION

against

NEW YORK AND QUEENS COUNTY RAILWAY  
COMPANY.

Complaint Order No. 773 (see form, note 1) issued October 9th.  
Hearing Order No. 833 (see form, note 2) issued November 13th.  
Hearing held November 13th.

OPINION OF COMMISSION.

(Adopted December 8, 1908.)

COMMISSIONER BASSETT:—

Hearings have been held herein and the complainants given an opportunity to show in what respect the operation of the defendant's Corona line has been defective. The New York and Queens County Railway Company operates a large number of lines in Queens county. The particular line under consideration is a line of two tracks running from Long Island City to Flushing via Borden avenue, Jackson avenue, Newtown road, Anderson avenue, Kelly avenue, Woodside avenue, Broadway (Elmhurst), Whitney avenue, Ludlow avenue, Main street (Corona), Locust street, and on a trestle to Flushing. Briefly, this line serves Long Island City, Woodside, Winfield, Newtown, Elmhurst and Corona, all in the borough of Queens. The operating company in order to give during evening rush hours adequate service to those portions of the locality that lie near Long Island City has devised a short line with its terminus at Ludlow avenue and Eighth street, Elmhurst, and operates cars on this short line every ten minutes. As the cars operate on the through line every ten minutes, the combined headway of five minutes for the thickly settled parts of the route is effected. The main complaint is that the through cars in evening rush hours are crowded, whereas the short line cars are at corresponding times only partly filled. The complainants say that the remedy is to run all cars through to Flushing or to the edge of the salt meadows lying between Corona and Flushing. It appears that the passengers who suffer most are those who live in Corona beyond the terminus of the short line. They also complain because no transfers are given between the short line and through line.

The proof shows that there is no permanent overcrowding of the through cars that proceed beyond Elmhurst, where the short line terminates. This being the case the commission is unwilling to require the short line cars to proceed to the end of the route as such operation would cause a greater number of cars in the outlying portion of the line than the public requires. In my opinion the main cause of the trouble is due to the lack of transfers or through privileges to those who use the short line and desire to go further. The Commission is not unwilling to have an operating company turn back cars at points on its line adjusted so as to give the best accommodation to all and with a fair degree of economy by the company, but when a company chooses to exercise this privilege of cutting back its cars it should allow passengers desiring to proceed beyond that point to do so without paying extra fare. If an extra fare is demanded the overloading of through cars and corresponding underloading of short line cars is quite sure to result. The reason for this is that passengers desire to take the first car that starts toward their home. A passenger proceeding only a short distance will take the through car if that is the first car. The result is that the through cars carry short distance passengers as well as long distance passengers and become overcrowded. The short line cars being prevented by the extra fare from carrying long distances passengers carry short distance passengers only. This creates a constant tendency to overload the through cars and under load the short line cars. This tendency would exist to a slight degree even if transfers were given because through passengers would prefer

to ride on through cars, but this tendency is minimized if the transfers are given. For instance, if the extra fare is charged, a person desiring to go to Flushing will approach the cars at the ferry in Long Island City, find the first car a through car with standing room only and the next car a short line car with plenty of seats. He can take his choice between riding to Elmhurst, about five and one-half miles, without a seat or of riding in the short line car to Elmhurst with a seat but with the necessity of paying another fare to go on from there to Flushing. Most people choose to stand. Crowding of this sort is unnecessary and the company should use every means to prevent it. There is no good reason why it should not make seats in its short line cars available to through passengers if the through passengers are willing to transfer at Elmhurst. My conclusion, therefore, is that if the company continues to cut back part of its cars in the evening rush hours at any point in Elmhurst or Corona other than at the edge of the salt meadow it should transport without extra charge the passengers that wish to proceed further east on this line.

Thereupon the following final order was issued:

R. H. NICKERSON, for CORONA IMPROVEMENT ASSOCIATION,  
against  
NEW YORK AND QUEENS COUNTY RAILWAY COMPANY,  
"Failure to run cars to Corona Terminus from Long Island City."

*Complainant,*  
*Defendant.*

CASE No. 833,  
FINAL ORDER,  
December 8, 1908.

Under Order for Hearing No. 833, made November 13, 1908.

This matter coming on upon the report of the hearing had herein on the 24th day of November, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made November 13, 1908, and that said order was duly served upon the New York and Queens County Railway Company, and that said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on November 24, 1908. Mr. Commissioner Bassett presiding at said hearing and proof being taken, Grosvenor H. Backus, Esq., Assistant Counsel to the Commission, attending and A. G. Peacock, Esq., appearing for said New York and Queens County Railway Company,

Now, it being made to appear after the proceedings upon said hearing that the regulations, practices and service of said New York and Queens County Railway Company in respect to the transportation of persons on its line from Long Island City to Corona in the borough of Queens, city and State of New York, are unjust, unreasonable, improper and inadequate, and it being made to appear after said proceedings that it is and will be just, reasonable and proper that the said regulations, practices and service of the said New York and Queens County Railway Company on said line between Long Island City and Corona should be supplemented and changed in the particulars hereinafter set forth,

Now, therefore, on motion duly made and seconded, it is

*Ordered.* That on and after the 18th day of December, 1908, the New York and Queens County Railway Company shall increase its schedule of through cars heretofore operated on a ten minute headway on its Corona line by running as through cars the ten cars that have heretofore been turned back at Elmhurst; or that failing to operate any of said increased number of cars as through cars said company shall operate at least as many short line cars as have been heretofore operated and furnish a transfer to any and every passenger on any short line car on said route, entitling a passenger to continue his ride from the terminus of the short line run, without the payment of any additional fare besides the original fare of five (5) cents paid on the short line car, and it is

*Further ordered.* That this order shall take effect immediately, and shall continue in force until modified by the further order of this Commission.

*Further ordered.* That before the 12th day of December, 1908, said New York and Queens County Railway Company shall notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

New York Central and Hudson River Railroad Company and  
New York, New Haven and Hartford Railroad Company.—  
Improvement in and addition to service.

Hearing Order No. 279.  
Opinion of Commissioner Eustis.  
Dismissal Order No. 473.

In the Matter  
of the

Hearing upon the Motion of the Commission on the Question of Improvement in the Addition to the Service of the NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY and of the NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, in respect to changes in manner of announcing trains at the One Hundred and Twenty-fifth street station.

ORDER FOR HEARING  
No. 279.  
February 21, 1908.

*It is hereby ordered,* That a hearing be had on the 9th day of March, 1908, at 11 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 134 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the New York Central & Hudson River Railroad Company and the New York, New Haven & Hartford Railroad Company, in respect to transportation of persons in the State of New York, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances and service of the said companies, as hereinafter set forth, are such as may be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to them and to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

1. That the said railroads designate an experienced announcer or announcers who shall be on duty at all times at the One Hundred and Twenty-fifth street station for the purpose of indicating to all passengers in the waiting rooms and on the platforms the arrival of all trains, and that a system be adopted and maintained whereby the announcer or announcers shall be informed several minutes in advance of the arrival of each train as to the destination of that train, and that there shall be at all times on the platform for north bound trains at least one man who shall give his entire time to the work of properly announcing trains and giving information.

2. That the said railroads shall cause suitable signs to be properly placed explaining the system of announcing trains and indicating certain officials to whom any passenger may apply for information as to the time of departure of trains and as to the destination of trains.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said New York Central and Hudson River Railroad Company and New York, New Haven and Hartford Railroad Company, be given at least ten days' notice of such hearing, by service upon each of them, either personally or by mail, of a certified copy of this order, and that at such hearing said companies be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held March 9th.

OPINION OF COMMISSION.

(Adopted May 8, 1908.)

COMMISSIONER EUSTIS:—

In the matter of the complaint of J. Heron Cressman against New York Central and Hudson River Railroad Company for failure to properly announce the arrival

of trains at One Hundred and Twenty-fifth street station, the defendant answered the complaint of the complainant in this case in effect that proper announcement was made of all approaching trains.

At the hearing the complainant failed to appear, and the testimony of William H. Elliott, one of the Commission's traffic inspectors substantially confirmed the testimony produced by the defendant, in effect that all trains were announced on their approaching the platform at One Hundred and Twenty-fifth street by an employee with a megaphone. It appears from the testimony of the defendant that this is in accordance with orders given to their employees, and the only exception being where the employees become careless or negligent, bringing in the human element which applies to all matters where employees have to be depended upon.

I therefore recommend that the complaint be dismissed.

Thereupon the following dismissal order was issued:

DISMISSAL ORDER NO. 473.

May 8, 1908.

This matter coming on upon the report of the hearing had herein on the 9th day of March, 1908, and it appearing that said hearing was held pursuant to an order of this Commission No. 279, made the 21st day of February, 1908, upon motion of the Commission, at the instance and request of J. Heron Crossman, and that said order was duly served upon the New York Central and Hudson River Railroad Company and the New York, New Haven and Hartford Railroad Company, and that said service was by said companies duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 9th day of March, 1908, before Mr. Commissioner Eustis, presiding. Arthur DuBois, Esq., appearing for the Public Service Commission for the First District, and E. H. Boles, Esq., appearing for the said New York Central and Hudson River Railroad Company, and W. T. Quinn, Esq., appearing for the said New York, New Haven and Hartford Railroad Company, and no one appearing on behalf of J. Heron Crossman, complainant, and proof having been taken upon said hearing and it appearing that the service of the above named defendants in the manner of announcing trains at the One Hundred and Twenty-fifth street station is not unreasonable, improper and inadequate,

Now, therefore, on motion made and duly seconded, it is

*Ordered*, That the said complaint be and the same hereby is dismissed, and that this order be filed in the office of the Commission; and it is further

*Ordered*, That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by said complaint and order or the proceedings thereon.

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New York Central and Hudson River Railroad Company.—Increase of service at University Heights station.

Complaint Order No. 313.

Hearing Order No. 513.

Opinion of Commissioner Eustis.

Final Order No. 608.

COMPLAINT OF ELMER A. ALLEN  
against

NEW YORK CENTRAL AND HUDSON RIVER  
RAILROAD COMPANY.

Complaint Order No. 313 (see form, note 1) issued March 6th.

Hearing Order No. 513 (see form, note 3) issued May 22d.

Hearings held June 2d, 9th and 11th.

## OPINION OF COMMISSION.

(Adopted June 26, 1908.)

COMMISSIONER EUSTIS:—

The matter of the complaint of Elmer A. Allen against the defendant above named, complaining of the service of the defendant in that it had taken off one of its trains from University Heights station which arrived there at 8:18 in the morning, and also the further complaint that the rate of fare from University Heights to One Hundred and Fifty-fifth street of nine cents was unreasonable, was referred to me.

The testimony was taken in this matter on the 2d, 9th and 11th of June, 1908, and in so far as the complaint relates to the removal or taking off of the train which stopped at University Heights at 8:18 A. M., going south, I find that this train was taken off from this station and the other stations northerly thereof in the borough of The Bronx in order to create a semi-express train for people using this train from Yonkers, Park Hill, Lowerre and Caryl, there being a previous train upon this line stopping at the University Heights station at 8:01 and a following train stopping at 8:46 A. M.

It also appeared from the evidence that while there were quite a number of persons who appeared upon the hearing and gave testimony that they would be very greatly inconvenienced if this train was required to stop at University Heights, that it would delay its arrival at One Hundred and Fifty-fifth street to such an extent that they would lose the connecting elevated express, which would delay them at least five minutes before the next elevated express went out.

There was no evidence produced, excepting the evidence of the complainant himself, as to the necessity of this train stopping, but it may be presumed that others in that immediate locality were inconvenienced. It also appeared from the evidence that the train was very little patronized at University Heights station, in fact nearly all of the travelers in that section prefer the connections they can make with the subway direct across the bridge, or by trolley connections at One Hundred and Eighty-first street.

Since the hearing closed the defendant has submitted a statement in writing from its general solicitor that they proposed to have one of their Hudson river trains stop at this station at 8:13 in the morning, which is within five minutes of the time that the other train stopped, and transfer can be made from the Hudson river train to the Putnam division at either Morris Heights or Highbridge where the 8:05 train from Yonkers stops, so that the complainant can be accommodated on this road by taking this train five minutes earlier and making a change of cars at either Morris Heights or Highbridge, which train is sufficiently near the time to be accepted by the complainant as sufficient.

I therefore recommend that the complaint in this particular be considered satisfied and complied with.

In the matter of the rate of fare, the other part of the complaint, as soon as the matter was brought to the attention of the counsel for the defendant upon the hearing he stated frankly that he was convinced that there was a discrimination against the University Heights station in the matter of fare, as it appeared that other stations upon the line of this road for an equal or greater distance were receiving a five-cent fare, and stated at the hearing that if the matter was postponed for sufficient time to take the matter up with their Mr. Fort, who had charge of traffic rates, he believed the matter could be adjusted.

Since that time I have received a written communication from Mr. Fort stating that they were going to adjust their rates along this division and would prepare a new tariff by July 1st to go into effect August 1st, wherein the fare from University Heights to One Hundred and Fifty-fifth street would be reduced from nine to five cents.

I would therefore recommend that in regard to this phase of the complaint an order be entered in conformity with the intention of the railroad officials that the rate of fare from University Heights to One Hundred and Fifty-fifth street and from One Hundred and Fifty-fifth street to University Heights on the Putnam division be reduced from nine to five cents, the same to go into effect not later than August 1, 1908, and submit an order accordingly.

Thereupon the following final order was issued:

In the Matter of the Complaint  
ofELMER A. ALLEN, *Complainant,*  
*against*NEW YORK CENTRAL AND HUDSON RIVER  
RAILROAD COMPANY, *Defendant.*FINAL ORDER No. 608.  
June 26, 1908.

After Hearing Order No. 513, dated May 26, 1908.

This matter coming on upon the report of the hearing had herein on the 2d day of June, 1908, the 9th day of June, 1908, and the 11th day of June, 1908, and it appearing that the said hearing was had by and before the Commission pursuant to Order for Hearing No. 513, dated the 22d day of May, 1908, and returnable on the 2d day of June, 1908; and it appearing that said hearing order was issued upon the complaint of the above named complainant and the answer of the New York Central and Hudson River Railroad Company thereto; and it appearing that said order was duly served upon said New York Central and Hudson River Railroad Company, and said service was by said company duly acknowledged; and it appearing that said hearing was duly had by and before the Commission on the dates aforesaid before Mr. Commissioner Eustis, presiding; Elmer A. Allen, Esq., complainant, appearing in person; E. H. Boles, Esq., appearing for said railroad company, and Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission; and it appearing that the said complaint related (1) to the failure of the said railroad company to stop a certain southbound train at the University Heights station on the Putnam Division of said company at 8:18 A. M., and (2) to the alleged excessive fare charged by said company for transportation on said line between One Hundred and Fifty-fifth street station and University Heights station; and proof having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that said complaint has been substantially satisfied in so far as it relates to the failure of said company to stop at University Heights station the train above mentioned at 8:18 A. M., by the stopping at said station of one of the Hudson river southbound trains at 8:13 A. M., and that, therefore, the complaint in this particular should be dismissed; and it having been made to appear after the proceedings on said hearing that the rates, fares and charges demanded, exacted, charged and collected by said company upon said Putnam division for the transportation of persons between University Heights station and One Hundred and Fifty-fifth street station in the First District are unjustly discriminatory and that it would be just, reasonable and proper that the rate charged for said service be reduced as hereinafter provided, and that the rate hereinafter provided would be a just and reasonable rate for said service, and that the time hereinafter provided for putting such change into effect would be reasonable for that purpose; and said company having admitted the rate now charged to be discriminatory, and having signified its willingness to reduce said rate in the manner hereinafter provided;

Now, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered.*

1. That said complaint, in so far as it refers to the failure of said company to stop the train mentioned in the complaint at University Heights station at 8:18 A. M., be and the same hereby is dismissed.
2. That by or before the 1st day of August, 1908, said company reduce its fare for carrying passengers between University Heights station and One Hundred and Fifty-fifth street station on said line in either direction from nine cents to five cents, and that said rate shall be thereafter observed by said company and in force as the maximum to be charged.
3. That this order shall take effect immediately and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.
4. *It is further ordered.* That said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District, within five days after service of this order upon it, whether the terms of this order are accepted and will be obeyed.

New York Central and Hudson River Railroad Company.—  
Operation of freight trains on Eleventh avenue.

Hearing Order No. 745.  
Opinion of Commissioner Eustis.  
Opinion of Commissioner Eustis.  
Final Order, Case No. 745.

In the Matter  
of the

Hearing on motion of the Commission on the question of the regulations, practices, appliances, equipment and service of the NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

HEARING ORDER No. 745.  
September 29, 1908.

"Operation of freight trains on Eleventh Avenue."

*It is hereby ordered,* That a hearing be had on the 8th day of October, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, appliances, equipment and service of the New York Central and Hudson River Railroad Company in respect to the transportation of persons and property in the First District are unreasonable, improper, unsafe or inadequate as hereinafter set forth, and whether changes, additions and improvements thereto ought reasonably to be made in the manner below set forth in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of persons and property, and to determine whether a change, addition, and improvement in the regulations, practices, equipment, appliances and service of said company, as hereinafter set forth, are such as will be just, reasonable, safe, adequate and proper and ought reasonably to be made:

1. Whether the New York Central and Hudson River Railroad Company should be directed to decrease the number of cars operated as a maximum in its freight trains on Eleventh avenue in the city of New York;

2. Whether said New York Central and Hudson River Railroad Company should be directed not to operate freight trains during certain hours of the day, on Eleventh avenue;

3. Whether said New York Central and Hudson River Railroad Company should be directed not to operate any freight trains from the Sixtieth street yard for the Thirtieth street yard until it is known at the Sixtieth street yard that there will be room in the Thirtieth street yard for the reception of said trains; also not to operate any trains from the Thirtieth street yard for the Sixtieth street yard until it is known at the Thirtieth street yard that there will be room at the Sixtieth street yard for the reception of said train;

4. Whether said New York Central and Hudson River Railroad Company should be directed to increase the number of trainmen employed upon its freight trains operated on Eleventh avenue in the city of New York;

5. Whether said New York Central and Hudson River Railroad Company should be directed to make other changes in its regulations, practices, service, equipment, or appliances in connection with the operation of freight trains on Eleventh avenue in the city of New York.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions, and to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the New York Central and Hudson River Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held October 8th and 15th.

OPINION OF COMMISSION.

COMMISSIONER EUSTIS:—

This investigation by the Commission was taken up on account of the numerous accidents that occur on the Eleventh avenue freight train service between Thirtieth and Fifty-ninth streets, for the purpose of inquiring into the regulations now existing under which such trains are operated, and to ascertain whether the same were unsafe or inadequate and whether changes and improvements thereto ought reasonably to be made in order to secure greater safety for the persons using said avenue, two hearings were had, one on October 8 and the other on October 15, 1908. A large amount of testimony was taken, from which it appears that most of the serious accidents that have occurred for the past fifteen months along this line can be divided into three classes — those that are trespassers on the trains, truck drivers endeavoring to cross in front of moving trains when there is not sufficient time to do the same safely, and persons getting confused while on the avenue.

The evidence presented shows that while this has been called "Death Avenue," the records in the Commission's office show that the serious accidents that have occurred along this line for the last fifteen months are not as great as they are on other lines within the city; and that during that time a large percentage of the serious accidents have occurred to trespassers or persons stealing rides. Of the three deaths that have occurred, two were adults and one a child, two of whom were trespassers. Three of the serious accidents were caused by truck drivers endeavoring to get in ahead of the moving train.

The company keeps at its yards at Fifty-ninth street a force of police officers, numbering twenty-four, for the purpose of protecting its trains, and the evidence shows that for the past year or more they have not been able to accomplish any results in regard to making arrests of those who are trespassers on the trains, on account of the difficulty in securing any conviction before the city magistrates. Many illustrations were given where these trespassers were taken to court and discharged by the magistrates, who ridiculed the company for having made the arrests.

It would appear from this evidence that the magistrates were under the impression that the company was making these arrests for the purpose solely of preventing the people from getting a free ride, while the main object of the company has been not that they object to giving these people a free ride, but to eliminate the great danger of accidents.

It also appears that some time ago a similar situation existed on Tenth avenue below Thirtieth street, and a crusade was made by the police officers of the railroad company in co-operation with the police officers of the city and the city magistrates, and that the result of such crusade was the elimination of ride-stealing on freight cars along that portion of the company's line. It was the consensus of opinion of all the witnesses at the Eleventh avenue hearing that if a similar crusade obtained for a few weeks along the line of Eleventh avenue north of Thirtieth street it would produce equally good results.

I would, therefore, strongly recommend that the police officers of the city, and also the police magistrates, be requested to co-operate with the police officers of the railroad company to punish the offenders so that the custom now existing will be broken up.

The present regulation of the railroad company is prescribed by an order issued by the old State Railroad Commission, which limits the length of its freight trains to twenty-five during the day time, and thirty cars at night, and the complaint has been made that there were not sufficient brakemen upon those cars to protect them; but the evidence upon this investigation showed very clearly that brakemen upon the top of the moving freight cars in any number would not deter people from jumping on the cars for a ride, as it was considered by all a dangerous experiment to undertake to eject anyone from a train when they were either on the train or in the act of getting on, as such action would be considered exceedingly dangerous.

It also appears from the testimony that the number of flagmen at the crossings can not have any effect upon these trespassers, as the duty of the flagmen is confined entirely at the crossings where they are to give due warning of the approach of trains for the purpose of notifying pedestrians and truckmen not to cross; but if pedestrians insist upon violating this warning, they are powerless to prevent them, and, if they undertook to do so, they would be taken away from their post of duty and might cause an accident in place of preventing one.

As these trains are entirely controlled by the engineer, in so far as the brakeman's duty is concerned, it appeared from the testimony of the Commission's experts that greater efficiency would be accomplished by placing one active man on each end of the train, who would be in such a position that he could easily jump to the ground and protect pedestrians or truckmen that were passing in front thereof.

Another suggestion that was brought out upon the hearing on the part of the Commission related to the time when the tracks were to be free from service by the railroad company. Under the Railroad Commission's order no operation is permitted between the hours of 8:25 and 8:55 A. M., 11:50 A. M. and 12:55 P. M., and 2:50 and 3:10 P. M., these hours having been eliminated from the service in order to give greater protection to school children during the time when they would be going to and from their schools. The railroad maintained that it is impossible to

increase these hours without great injury to the railroad service, on account of the company having a large amount of high class and perishable freight that is arriving at the Fifty-ninth street yard at various hours of the day and night, and which it is necessary for it to move with expedition to St. John's Park and Thirtieth street yards in order that the same may be delivered promptly to the consignees; and also to relieve the Fifty-ninth street yard for other incoming and outgoing freight trains.

It also appears that nearly all of the serious accidents that have occurred during the past fifteen months have occurred during daylight hours, and that the greatest amount of travel by pedestrians as well as truckmen during the day is between 7 and 8 in the morning and 4:30 and 6 in the evening. During those hours men are naturally anxious, especially if they are late in the morning, to take chances in getting to their work on time, and in the evening hour exceedingly anxious when the day's work is over to lose no time in getting to their homes; and that, if the operation of trains along Eleventh avenue, in addition to the time when they are now allowed to operate under the order of the Railroad Commission, should also be required to cease between 7:30 and 8:25 A. M. and 5 and 6:15 P. M., it would be an additional precaution and safeguard to a large number of people. And I am very glad to report that in talking this matter over with the counsel and officials of the railroad company, who have charge of the operation of those trains, they have consented to give this suggestion a tentative trial from the 9th to the 16th of November, 1908, which trial is to be closely watched by competent inspectors from the office of the Commission.

Another dangerous element along the line of Eleventh avenue is the two lines of unused street car tracks, lying on each side of the New York Central and Hudson River Railroad Company's tracks, between Thirty-fourth and Forty-second streets. These tracks add greatly to the confusion among teamsters and danger along that part of Eleventh avenue.

The question of the number of flagmen was made a subject of a previous investigation by this Commission, but from certain quarters there has been a continual complaint that there are not sufficient flagmen and that there should be two at each street crossing, and also that the number of flagmen was less than ordered by the State Railroad Commission.

I find that the recommendation of October 31, 1906, of the Board of Railroad Commissioners relating to flagmen was that a flagman be stationed by the company between Thirty-sixth and Thirty-seventh streets to take care of both crossings; that a flagman be stationed at Forty-fourth street; that a flagman be stationed at Forty-fifth and Forty-sixth streets to take care of both crossings; also that a flagman be located at Forty-seventh and Forty-eighth streets to take care of both crossings; and a flagman stationed at Fifteenth street to take care of the crossing also at Forty-ninth street; total number of flagmen being five, four of whom were expected to cover two adjacent street crossings, or protection at nine street crossings.

On the previous hearing in regard to the complaint made that there was insufficient protection at the street crossings, it was shown at that time that the railroad company was not only maintaining the number of flagmen recommended by the Board of Railroad Commissioners but many others. The testimony showed at that time that they had twenty-six flagmen assigned along the avenue from Thirty-fourth to Fifty-ninth streets, nineteen day flagmen and seven at night.

After a very thorough investigation this Commission issued its Final Order No. 707, which went into effect on September 1, 1908, relating to this situation, and the result of that order was that the number of flagmen was increased by seven, making a total of thirty-three, twenty during the daytime and thirteen at night, and it was believed by the Commission at that time that the number of flagmen ordered was sufficient, and there has been no evidence produced on this hearing to show that any additional flagmen are necessary.

I would therefore recommend that the police commissioner of this city, and the police magistrates, be requested to co-operate heartily with the officials of the railroad company to enforce section 426 of the Penal Code, against illegal riding, and that the attention of the Borough President of the borough of Manhattan be called to the unused tracks on Eleventh avenue between Thirty-fourth and Forty-second streets, and that he be requested to use all means in his power to have the same

removed, and that the order against the railroad company be withheld until after the experiment between November 9th and 16th is had.

Dated October 30, 1908.

OPINION OF COMMISSION.

(Adopted December 11, 1908.)

COMMISSIONER EUSTIS:—

At the close of the investigation in this matter I made a preliminary report embodying certain recommendations which were to be given a trial before an order should issue from this Commission.

One of the suggestions was that the police magistrates be requested to co-operate with the officials of the railroad company to enforce section 428 of the Penal Code against illegal riding, and I am pleased to report that this has been concurred in heartily by the police magistrates, and the officials of the railroad company report that since that time all persons arrested have been held by the magistrates, and that at the present time the custom of illegal riding on the freight cars on Eleventh avenue has almost ceased.

Another of these recommendations was to eliminate the operation of freight trains on Eleventh avenue at certain other times of the day in addition to what had been eliminated by the recommendation of the previous Railroad Commission, to wit, that there should be no freight trains operated between 7:30 and 8:15 A. M. and between 5 and 6:15 P. M. This suggestion was given a trial for a week, and at the close of the trial, which was closely watched by the inspectors of the Commission, the railroad people asked for time to make a further trial in which the free time should be divided as follows: between 6:40 and 7:20 and 8:15 and 9:00 A. M., and 4:45 and 5:15 and 5:45 and 6:15 P. M. After the experiment was made the officials of the railroad company reported that by dividing the time this way they could better handle the situation, and that it also better served the public in the morning and the evening, as it cleared the avenue for twenty minutes before and after 7 o'clock in the morning, when a great many people were going to work, and for fifteen minutes before and after 5 o'clock and fifteen minutes before and after 6 o'clock in the evening, when a large percentage of the employees would be returning from their work; and they felt satisfied that when conditions were normal, such as existed at the time the experiment was made, they would be able to handle all of their freight during the other parts of the day. They urged very strongly, however, that when conditions were not normal, that is, whenever any congestion arose and there was any serious delay in the arrival of their freight trains, it would not be possible to adhere to this arrangement without very great injury to their service, and also to a very large number of the people of this city who were anxious to receive their consignments of freight at the very earliest moment.

I would, therefore, recommend that an order be entered prohibiting them from operating their freight trains during said hours in addition to the other times during which they are prohibited from operating trains now under the old Railroad Commission's order, with a proviso that they be permitted in case of extreme necessity, like that which is sure to occur in case of heavy storms during the winter when all freight is blocked for a long time and then arrives in great quantities at one time, to relieve such congestion during the time between 6:40 and 7:20 A. M., and between 4:45 and 6:45 P. M., on condition that in case it is necessary to make such exceptions to the order they notify this Commission of the situation. And an order is herewith submitted accordingly.

Thereupon the following final order was issued:

CASE No. 745, FINAL ORDER.

December 11, 1908.

This matter coming on upon the report of the hearing had herein on October 8, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission, No. 745, made September 29, 1908, and returnable October 8, 1908, and that the said order was duly served upon the New York Central and Hudson River Railroad Company and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on October 8, 1908, and by adjournment duly had on October 15, 1908, before Mr. Commissioner Eustis, presiding; Arthur

DuBois, Esq., assistant counsel, appearing for the Commission, Alexander A. Lyman, Esq., appearing for the New York Central and Hudson River Railroad Company, and proof having been taken.

Now, it being made to appear, after the proceedings upon said hearing, that the regulations and service of the New York Central and Hudson River Railroad Company, in respect to transportation of property in the First District on its Eleventh Avenue line has been and is in certain respects unsafe, unreasonable and improper, and it being made to appear that the changes and improvements in the regulations and services of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper, and ought reasonably to be made to promote the security and convenience of the public.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered:* 1. That the New York Central and Hudson River Railroad Company be and it hereby is directed not to operate any freight trains on Eleventh Avenue, borough of Manhattan, city of New York, during the following hours:

On Sundays between 10 o'clock A. M. and 12 o'clock noon. On all other days of the week between 6:40 A. M. and 7:20 A. M., 8:15 A. M. and 9 A. M., 11:50 A. M. and 12:55 P. M., 2:50 P. M. and 3:10 P. M., 4:45 P. M. and 5:15 P. M., 5:45 P. M. and 6:15 P. M.

*Further ordered,* That this order shall take effect immediately and shall continue in force for a period of two years from and after the date of the taking effect of this order.

*Further ordered,* That within five days after service of this order upon the New York Central and Hudson River Railroad Company the said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### New York City Railway Company.

\*[Orders for improved service must provide for ordinary conditions, leaving to the company the duty and the power to provide such service as will be adequate for unusual circumstances.

It is the duty of the company to say how the increased number of cars ordered shall be distributed.]

The Commission adopted Order 171 requiring increased number of cars run on the Eighth Avenue Line. The receivers objected to the order for a fixed number of car miles for Sundays, as the difference between rainy and pleasant Sundays as regards number of passengers carried is often as great as 75 per cent, and also objected that they had not been advised how the increased number of cars ordered should be distributed. The chairman, on the recommendation of the Committee of the Whole, sent the following in reply thereto:

LETTER OF CHAIRMAN WILLCOX.

January 8, 1908.

Mr. ADRIAN H. JOLINE and Mr. DOUGLAS ROBINSON, Receivers for the New York City Railway Company, No. 621 Broadway, New York City:

DEAR SIRS.—On behalf of the Public Service Commission, I beg to acknowledge your letter of January 4, in which you question the accuracy of certain conclusions and the necessity of certain improvements in the service of the Eighth avenue line, in Order No. 171.

The conclusions and the improvements ordered were based upon the evidence before the Commission. A hearing was held upon the proposed order before it was issued. Notice was served upon you and acknowledgment given of this hearing, but no one appeared in your behalf. If you have any evidence you wish to present, a rehearing will be granted upon application.

The Commission fully appreciates that a fixed schedule may not be suited to all conditions. Instances may arise where a fixed number of cars may provide too few or too many seats for the traveling public. But in its orders for improved service this Commission must provide for ordinary conditions, leaving to the company the duty and the power to provide such a service as will be adequate for unusual and unforeseen circumstances. Thus, while it may be true that the Sunday schedule fixed in Order No. 171 calls for a greater number of cars than would be necessary upon a stormy day, it is not believed, upon the evidence presented at the hearing, that the schedule is unreasonable in view of the traffic upon an ordinary Sunday.

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\* See footnote, page 9.

You have requested that the Commission specify in detail how cars should be operated between 7 A. M. and 10 A. M. upon week days. This request seems to reflect a misunderstanding of the letter and intent of the Public Service Commissions Law. The statute specifically requires that a street railway company shall provide adequate service, thereby imposing the duty upon the company in the first instance of arranging proper schedules, routes, headways, equipments, etc. The act also provides that in case a company shall fail to live up to its obligation, the Public Service Commission may step in, and after a hearing may direct what improvements shall be made. It is not the duty of this Commission at this point, therefore, to say how the increased number of cars required to be run between 7 and 10 A. M. shall be distributed; that was the duty of the company and devolves upon you, as the receivers. Further, the details were not specified in the order because it was thought that as much freedom should be allowed the operating officials as possible. If, however, this Commission shall find, through its inspectors, that the service is inadequate or that the schedule is not properly designed to accommodate the traveling public, this Commission will exercise the authority vested in it, will perform the duty imposed upon it, will order what changes be made, and if necessary, will decide just what schedule shall be operated. The Commission believes, however, that it is quite possible for the service upon the Eighth avenue line to be improved, and that a desire upon your part to live up to the spirit as well as to the letter of the order will make unnecessary the issue of a further order going more into detail as to the operation of the road.

Perhaps this discussion is more or less academic, for in your letter you definitely state that you will accept the order, but lest there should be any misunderstanding, I am replying somewhat at length, at the request of the Commission.

Yours very truly,

WM. R. WILCOX,

*Chairman.*

**New York City Interborough Railway Company.**—Delay in commencing operation of Tremont avenue line from One Hundred and Eighty-first street to West Farms; increase in service from One Hundred and Eighty-first street to Bronx Park.

Order for Answer No. 210.

Hearing Order No. 242.

Hearing Order No. 242A.

Final Order No. 308.

Rehearing Order No. 736.

Opinion of Commissioner Eustis.

Final Order No. 798.

**ORDER NO. 210.**

January 17, 1908.

*Resolved*, That the New York City Interborough Railroad Company be required to make answer not later than Monday, January 20th, at 12 o'clock, as to the reasons for not commencing operation of the Tremont avenue line running from One Hundred and Eighty-first street to West Farms.

In the Matter  
of the

Hearing on motion of the Commission on the question of improvement in and addition to the service of the NEW YORK CITY INTERBOROUGH RAILWAY COMPANY in respect to increase of service of One Hundred and Eighty-first street to Bronx Park, and in respect to opening of new Tremont Avenue Line.

**ORDER FOR HEARING**  
No. 242.

February 4, 1908.

*It is hereby ordered*, That a hearing be had on the 17th day of February, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough

## 550 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Interborough Railway Company in respect to transportation of persons in the First District are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made, in the manner below set forth, in order to promote the security or convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices and service of said company, as hereinafter set forth, is such as will be just, reasonable, adequate and proper, and ought reasonably to be made to accommodate the passenger traffic offered to it, and to promote the convenience of the public, or in order to secure adequate service or facilities for the transportation of passengers, that is to say: Whether the following changes, additions, readjustment and increase of service should be put into effect:

(a) By operating daily, except Sundays, from Bronx Park to the One Hundred and Eighty-first street station of the subway a sufficient number of cars to furnish seats for all passengers between 7 A. M. and 9 A. M., every eight minutes, and run through to the One Hundred and Eighty-first street subway station.

(b) By operating daily, except Sundays, from the One Hundred and Eighty-first street station of the subway to Bronx Park a sufficient number of cars to furnish seats for all passengers between 5 P. M. and 7 P. M., every eight minutes.

(c) By operating daily, except Sundays, between One Hundred and Eighty-first street subway station and Bronx Park a sufficient number of cars to furnish a seat for every passenger, every thirty minutes.

(d) During all other hours of the day, there shall be operated over the entire line between the One Hundred and Eighty-first street station of the subway and Bronx Park a sufficient number of cars to furnish every passenger with a seat, every ten minutes.

2. By beginning operation of cars over the new Tremont avenue line from the One Hundred and Eighty-first street station of the subway to West Farms by way of Tremont avenue, Aqueduct avenue and other streets, and by operating over this line a sufficient number of cars to furnish seats for all passengers, as above suggested for the One Hundred and Eighty-first street and Bronx Park line.

And if any such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said New York City Interborough Railway Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

This order was superseded by Order No. 242A.

### ORDER FOR HEARING NO. 242A.

(Substitute for Order No. 242.)

February 7, 1908.

*It is hereby ordered*, That a hearing be had on the 17th day of February, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and service of the New York City Interborough Railway Company in respect to transportation of persons in the First District are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices and service of said company, as hereinafter set forth, is such as will be just, reasonable, adequate and proper, and ought reasonably to be made to accommodate the passenger traffic offered to it, and to promote the convenience of the public, or in order to secure adequate service or facilities for the transportation of passengers, that is to say: Whether the following changes, additions, readjustment and increase of service should be put into effect:

1. (a) By operating daily, except Sundays, from Bronx Park to the One Hundred and Eighty-first street station of the subway a sufficient number of cars so that every passenger presenting himself at any point on the said line between 7 A. M. and 9 A. M. shall be furnished with a seat without waiting more than eight minutes.

(b) By operating daily, except Sundays, from the One Hundred and Eighty-first street station of the subway to Bronx Park a sufficient number of cars so that every passenger presenting himself at any point on the said line between 5 P. M. and 7 P. M. shall be furnished with a seat without waiting more than eight minutes.

(c) By operating daily, except Sundays, between One Hundred and Eighty-first street subway station and Bronx Park a sufficient number of cars so that every passenger presenting himself at any point on the said line between 1 A. M. and 5 A. M. shall be furnished with a seat without waiting more than thirty minutes.

(d) During all other hours of the day, there shall be operated over the entire line between One Hundred and Eighty-first street station of the subway and Bronx Park a sufficient number of cars so that every passenger presenting himself at any point on the said line shall be furnished with a seat without waiting more than ten minutes.

2. By beginning operation of cars over the new Tremont avenue line from the One Hundred and Eighty-first street station of the subway to West Farms by way of Tremont avenue, Aqueduct avenue and other streets, and by operating over this line a sufficient number of cars to furnish seats for all passengers, as above suggested for the One Hundred and Eighty-first street and Bronx Park line.

And if any such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said New York City Interborough Railway Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held February 17th, 24th, and March 2d.

The following final order was issued:

**ORDER NO. 308.**

March 3, 1908.

This matter coming on upon the report of the hearing had herein on the 17th day of February, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, made February 7, 1908, and returnable on the 17th day of February, 1908, and that said order was duly served upon the New York City Interborough Railway Company, and that said service was by it duly acknowledged, and that said hearing was held by and before the Commission on the matters in said order specified on February 17, 1908, and by adjournment duly had on March 2, 1908, at which sessions Commissioner Eustis presided, Arthur DuBois, Esq., appearing for the Commission, Alfred A. Gardner, Esq., appearing for the New York City Interborough Railway Company, and proof having been taken at both of said sessions.

Now, it being made to appear after the proceedings upon said hearing that the regulations and service of the New York City Interborough Railway Company in respect to transportation of persons in the First District, has been and is unreasonable, improper and inadequate, and that changes, additions and improvements thereto ought reasonably to be made in the manner below set forth, in order to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and it being made to appear that the changes, additions and improvements in regulations and service of the said company as below set forth are such as are just, reasonable, adequate and proper and ought reasonably to be made to promote the convenience of the public.

Now, on motion of George S. Coleman, Esq., counsel to the Commission,

It is ordered, That the New York City Interborough Railway Company be and it hereby is directed and required to operate the below named lines of surface cars at the times, in the number and between the following points:

1. On One Hundred and Fifty-fifth street, McComb's Dam bridge and Ogden avenue between One Hundred and Fifty-fifth street station of the elevated railroad and the eastern end of Washington bridge.

2. One Hundred and Eighty-first street, Washington bridge and Aqueduct avenue from the One Hundred and Eighty-first street station of the subway to Creston avenue and Kingsbridge road.

3. Washington bridge, Aqueduct avenue, Tremont avenue from the One Hundred and Eighty-first street station of the subway to One Hundred and Eightieth street and West Farms, as follows:

(a) By operating cars on all the said lines daily except Sunday, in sufficient numbers so that any passenger desiring to ride in either direction and who presents himself at any point on any of the said lines between the hours of 7 A. M. and 9 A. M., and between the hours of 5 P. M. and 7 P. M. shall be furnished with a seat without waiting more than eight minutes.

(b) By operating cars on the said lines, daily except Sunday, in sufficient numbers so that every passenger desiring to ride in either direction and who presents himself at any point on any of the said lines between the hours of 6 A. M. and 7 A. M., or between the hours of 9 A. M. and 10 A. M., or between the hours of 3 P. M. and 5 P. M., or between the hours of 7 P. M. and 8 P. M., shall be furnished with a seat without waiting more than ten minutes.

(c) By operating cars on the said lines, daily except Sunday, in sufficient numbers so that every passenger desiring to ride in either direction and who presents himself at any point on any of the said lines between the hours of 10 A. M. and 3 P. M., or between the hours of 8 P. M. and 1 A. M. shall be furnished with a seat without waiting more than fifteen minutes.

(d) By operating cars on the said lines, daily except Sunday, in sufficient numbers so that every passenger desiring to ride in either direction and who presents himself at any point on any of the said lines between the hours of 1 A. M. and 6 A. M. shall be furnished with seats without waiting more than thirty minutes.

## 552 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

*And it is further ordered*, That this order shall continue in force for a period of two years from and after taking effect of the same, but without prejudice to an order for further or additional hearing and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of two years.

*And it is further ordered*, That this order shall take effect on the 10th day of March, 1908.

*And it is further ordered*, That before March 10, 1908, the said New York City Interborough Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

### REHEARING ORDER No. 736.

September 25, 1908.

An order, No. 308, having been made and filed herein on March 3, 1908, under and pursuant to an Order for a Hearing No. 242a made February 7, 1908, directing the New York City Interborough Railway Company to increase its service between One Hundred and Eighty-first street and Bronx park, and said Order No. 308 having been duly served upon the New York City Interborough Railway Company, and said company having accepted said Order No. 308 on March 6, 1908, and said company having subsequently, on September 23, 1908, applied in writing to this Commission for a modification of the terms of said Order No. 308,

Now, on motion made and duly seconded, it is

*Ordered*, That a rehearing upon the matters contained in said Order No. 308 be held on the 7th day of October, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of Order No. 308, whether Order No. 308 or any part thereof, is unjust, unwise, and whether the said Order No. 308 should be abrogated, changed or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said New York City Interborough Railway Company be given at least eight (8) days' notice of such rehearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held October 7th, 12th and 16th.

### OPINION OF COMMISSION.

(Adopted October 23, 1908.)

#### COMMISSIONER EUSTIS:—

This application for a rehearing relates only to a part of Final Order No. 308. That order provided for the service to be rendered on the different lines of the New York City Interborough Railway Company during the different hours of the day. The part or portion of the order on which they asked for the rehearing is the service rendered between the hours of 6 and 7 and 9 and 10 A. M., and 3 and 5 and 7 and 8 P. M.

Order No. 308 called for a ten-minute headway during these hours. The railway company felt that their service was more than adequate during these hours, and requested a modification thereof to a fifteen-minute headway. Hearings were had on October 7th, 12th and 16th. The issue made for the hearing was as to whether a fifteen-minute headway was an adequate service upon these lines, the railway company contending by its witnesses that it was, and various patrons of the road who appeared and testified claiming that it was not an adequate service.

This company is operating only three short lines — one known as the Ogden avenue line, 2.6 miles long; another known as the Crosstown line, 3.9 miles long; and another known as the Aqueduct avenue line, about 3.0 miles long. In order to operate the ten-minute service during the hours mentioned it requires but three cars each on the Ogden avenue and Aqueduct avenue lines, and five cars on the Crosstown line; and if the company were to operate on a fifteen-minute headway during those hours it would require one car less on each line.

The evidence of the manager of the road was that the cars during those hours carried about 30 per cent. of a load, and he introduced in evidence a schedule made

up at the request of the Commission showing the actual record fares on all of these lines for six days, from October 5th to October 10th, inclusive. An examination of this exhibit shows that often during those hours very large loads are carried; and an examination of a portion of that exhibit, relating to the Crosstown line during the hours from 6 to 7 A. M. shows that the loads vary from two passengers to eighty, and that the average number carried per trip only varies from twenty to twenty-six during the six days, and the average for the whole six days is twenty-three passengers; and, as those cars have a seating capacity of thirty-six passengers, this exhibit shows that the average load on this line for that hour was about 66 per cent.

Adequacy of service covers frequency of rides as well as seating capacity within the car, and, as these lines in certain portions run through open stretches of country that have no protection in inclement weather, the opportunity to secure a car without waiting would be far better than even to secure a seat if one had a choice between the two. It is to be further considered in this matter that the evidence shows the district through which these lines run is gradually building up, and that the traffic, if the company continues to render its past good service, will be bound to increase.

I am, therefore, of the opinion that the present service under Order No. 308, during the hours named, is not excessive, and the application for the modification of said order should be denied. Let an order be prepared accordingly.

Thereupon the following final order was issued:

**ORDER No. 798, DENYING APPLICATION FOR MODIFICATION OF ORDER  
No. 308.**

October 23, 1908.

An order, No. 308, having been made and filed herein on the 3d day of March, 1908, under and pursuant to an order for hearing No. 242a (substituted for Order No. 242) made on the 7th day of February, 1908, and said order having thereafter been duly served upon the New York City Interborough Railway Company, and said company having applied in writing to this Commission for a rehearing upon said order for a modification of its terms and an order, No. 786, having been made and filed herein on the 25th day of September, 1908, directing a rehearing on the matters contained in said Order No. 308, and said rehearing having duly come on before the Commission on October 7, October 12 and October 16, Mr. Commissioner Eustis, presiding, Arthur DuBois, Esq., Assistant Counsel for the Commission, attending and Albert J. Kenyon, Esq., appearing for the New York City Interborough Railway Company, and testimony having been taken, and the Commission being of the opinion after such rehearing and after a consideration of the facts, including those arising since the making of said Order No. 308, that no part of said order is in any respect unjust or unwarranted, and that there is no reason to abrogate, change or modify said order:

Now, therefore, on motion duly made and seconded, it is

*Ordered*, That the application of the New York City Interborough Railway Company for a modification of said Order No. 308 be and the same is in all respects denied; and it is further

*Ordered*, That this order shall take effect immediately and that a copy of the same be served upon the New York City Interborough Railway Company.

**New York City Interborough Railway Company.**

\*[It is desirable to divert travel from the Subway to the elevated lines in the Bronx.]

**OPINION OF COMMISSION.**

**COMMISSIONER EUSTIS:—**

In the matter of the communication received from the secretary of the High Bridge Taxpayers' Alliance, inclosing a copy of a resolution passed by said Alliance on the 7th day of January, 1908, and which was referred to me, I beg to report:

That the statement in the first resolution wherein said alliance protests against the recent order of this Commission requiring all Ogden avenue cars of the New York City Interborough Railway Company to continue up Aqueduct avenue instead of crossing Washington bridge to the subway station, is incorrect, and that no such

\* See footnote, page 9.

order has been issued by this Commission. The order evidently referred to was the order of this Commission, No. 158, in which the said railway company was ordered to maintain a service from One Hundred and Fifty-fifth street and Eighth avenue to Kingsbridge road along Ogden avenue and Aqueduct avenue on a schedule of not less than ten minutes headway during the greater portion of the day. There is plenty of time between said cars for through service up Ogden avenue and across Washington bridge were the same necessary.

And the further resolution passed by said Alliance that this Commission be requested to issue an order providing for adequate service of through cars over the Ogden avenue line to the said One Hundred and Eighty-first street station of the subway is not, in my opinion, required by the travel.

The people along the line of Ogden avenue who use this line of cars live between One Hundred and Sixty-first street and about One Hundred and Sixty-ninth street, and if they wished to go to their business down town by the proposed new route they would have to travel north on the Ogden avenue line nearly half a mile, and then west over Washington bridge nearly half a mile further, and then south on the subway.

It was found during the period that the said railway company operated the line from One Hundred and Fifty-fifth street to One Hundred and Eighty-first street station that very few passengers used said line beyond the northerly limits of High Bridge, and that the cars crossing Washington bridge to One Hundred and Eighty-first street never had more than three or four passengers, and often none at all, as shown by the examinations made during the time said line was in operation.

If the High Bridge Taxpayers' Alliance believe such a line is necessary, and can furnish evidence that there is a sufficient demand for it to require the establishing of a separate line, that would be the subject of a separate and distinct order from the one referred to in their resolutions; but it is my opinion that the few people that desire to travel from High Bridge north to Washington bridge, and thence across the river to One Hundred and Eighty-first street station of the subway, are sufficiently accommodated by transfer at the east end of Washington bridge to One Hundred and Eighty-first street.

It must be borne in mind that the present service from One Hundred and Fifty-fifth street to Kingsbridge road is a direct north and south line, and is one that brings the people most directly to the elevated station by which it is desirable to divert as many of the passengers as possible along the line of that road to the elevated line, as this line is not anywhere near as congested during the rush hours morning and night as the subway line is, and it would furnish the greatest relief to do everything in our power to relieve the congested condition of the subway at such times.

Dated, January 28, 1908.

See Order No. 158, page 45.

**New York City Interborough Railway Company.— Discontinuance of service of line which formerly ran up the Southern Boulevard from One Hundred and Eightieth street over One Hundred and Eighty-ninth street and Aqueduct avenue to Washington Bridge.**

Case No. 1025.

**COMPLAINT OF JOHN HAUT AND OTHERS**

*against*

**NEW YORK CITY INTERBOROUGH RAILWAY  
COMPANY.**

Complaint Order (see form, note 1) issued December 22d.

**New York City Railway Company.**— Turning back of cars marked "Polo Grounds" at One Hundred and Fifty-fifth street on Eighth avenue surface line.

**COMPLAINT OF C. M. DE LA VERGNE**

*against*

**NEW YORK CITY RAILWAY COMPANY AND  
ADRIAN H. JOLINE AND DOUGLAS ROBIN-  
SON, ITS RECEIVERS.**

Complaint Order No. 527 (see form, note 1) issued May 26th.

**Sea Beach Railway Company.**— Failure to stop New York trains at Luna Park station.

Complaint Order No. 330.  
Discontinuance Order No. 418.

**COMPLAINT OF THIRTY-FIRST WARD BOARD  
OF TRADE**

*against*

**SEA BEACH RAILWAY COMPANY.**

Complaint Order No. 330 (see form, note 1) issued March 10th.

The complaint was withdrawn. The following discontinuance order was issued:

**THIRTY-FIRST WARD BOARD OF TRADE, by  
James M. Conahan, Secretary;**

*Complainant,*

*against*

**SEA BEACH RAILWAY COMPANY,**

*Defendant.*

"Failure to stop New York bound trains at Luna Park Station."

**DISCONTINUANCE ORDER  
No. 418.  
April 17, 1908.**

An order, No. 330, having been made herein on or about the 10th day of March, 1908, ordering and directing the Sea Beach Railway Company to answer the complaint herein within a time therein specified, and the said Sea Beach Railway Company having on the 21st day of March, made answer thereto, and said answer having been transmitted to the complainant herein, and said complainant having, on April 13, 1908, notified this Commission in writing that it withdraws its complaint,

Now, upon motion made and duly seconded, it is  
*Resolved*, That the proceedings herein be, and the same hereby are, discontinued.

556 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

**Sea Beach Railway Company.— Failure of local trains to stop at Avenue S.**

Case 1008.  
Complaint Order.  
Hearing Order.

COMPLAINT OF J. J. KELLY ET AL.

*against*

SEA BEACH RAILWAY COMPANY.

Complaint Order (see form, note 1) issued December 4th.  
Hearing Order (see form, note 3) issued December 19th.  
Hearing held December 30th.

**South Brooklyn Railway Company.— Extension of short line to Parkville Station.**

Hearing Order No. 359.  
Opinion of Commissioner Bassett.  
Dismissal Order No. 432.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvements in and additions to the service and transportation facilities of the SOUTH BROOKLYN RAILWAY COMPANY.

ORDER FOR HEARING,  
No. 359.  
March 20, 1908.

Extension of Short Line Service to Parkville Station.

*It is hereby ordered,* That a hearing be had on the 1st day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices and services of the South Brooklyn Railway Company, in respect to transportation of persons in the First District, are unjust, unreasonable, improper or inadequate, and whether said company does not run trains enough or cars enough or with sufficient frequency, reasonably to accommodate passenger traffic transported by it, or offered for transportation to it, and if such be found to be the fact, then to determine whether it is reasonably necessary to accommodate and transport the said traffic transported or offered for transportation, and is and will be just, reasonable, proper and adequate to direct that the service of said South Brooklyn Railway Company be increased and supplemented at the points and times and in the particulars following, that is to say:

That the said South Brooklyn Railway Company cause all trains now operated on the short line service between Sands street and Kensington station to be operated beyond Kensington station to and as far as Parkville station.

And if such change, addition and improvement be found to be such as ought to be made as aforesaid, then to determine the details of such change, addition and improvement and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said South Brooklyn Railway Company be given at least ten days' notice of such hearing, by service upon it, either personally or by

mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held April 9th.

\*[A 15-minute service is not unreasonable or inadequate where cars are not overcrowded.]

OPINION OF COMMISSION.

(Adopted April 24, 1908.)

COMMISSIONER BASSETT:—

A hearing was had in this matter on the 9th day of April, 1908. The hearing was instituted upon motion of the Commission after complaint made by George Moeser, R. C. Beadle and others, asking that the so-called short line trains now operated northerly during the morning rush hours from Kensington on Gravesend avenue be operated from Parkville, a station on said avenue to the south of Kensington.

The through trains running through Parkville and Eighteenth avenue to Park Row during the morning rush hours a fifteen-minute headway, and if the short line service were extended to Parkville the headway northerly from Parkville, during these hours, would be approximately seven and one-half minutes. I do not regard a fifteen-minute service (which is the present service at Parkville and Eighteenth avenue) as an unreasonable or inadequate service at these stations as long as the cars are not overcrowded, and it appears in this case that they are not.

It does not seem to me that it is ordinarily justifiable to order the operating company to enlarge the scope of its short line service unless the regular through trains are badly overcrowded. Experience has shown that on every road where short line trains have been placed a demand has arisen from the stations further out that the short line service shall extend to them. In any case where the interval between trains is too great, the defect should ordinarily be remedied by increasing the number of through trains.

I am of the opinion that for the reasons stated the complaint should be dismissed, but without prejudice to other or further hearings.

Thereupon the following dismissal order was issued:

DISMISSAL ORDER No. 432.

April 24, 1908.

This matter coming on upon the report of the hearing had herein on the 9th day of April, 1908, and it appearing that said hearing was held pursuant to Order No. 359 of this Commission, dated March 20, 1908, and returnable on the 9th day of April, 1908, issued on motion of the Commission for the purpose of bringing on for hearing certain matters suggested by the complaint of George Moeser, R. G. Beadle and others against said South Brooklyn Railway Company, particularly the advisability of extending the present short line service on Gravesend avenue from Kensington station south to Parkville station, and it appearing that said hearing was had by and before the Commission on the matters embraced in said complaint, and in said order specified, on the 9th day of April, 1908, before Mr. Commissioner Bassett, presiding; Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and Arthur N. Dutton, Esq., appearing for the South Brooklyn Railway Company, and said George Moeser and R. C. Beadle, complainants, appearing personally, and proof having been taken upon said hearing, and it having been made to appear after the proceedings on said hearing that the service now afforded by said South Brooklyn Railway Company to the complainants and other residents of Parkville and Eighteenth avenue and vicinity is not inadequate or unreasonable, and that it would not be reasonable under the circumstances now existing to order the extension of short line service asked for in the complaint.

Now, therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered*, That the said complaint be and the same hereby is dismissed, and that this order be filed in the office of the Commission; and it is further

*Ordered*, That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by the said complaint and order for hearing or the proceedings thereon.

\* See footnote, page 9.

**South Brooklyn Railway Company and Nassau Electric Railroad Company.**— Running of open cars in inclement weather on Fifteenth street and Marcy avenue surface lines.

COMPLAINT OF WALTER C. KAUFMAN

*against*

SOUTH BROOKLYN RAILWAY COMPANY, NAS-SAU ELECTRIC RAILROAD COMPANY.

Complaint Order No. 480 (see form, note 1) issued May 12th.

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**South Brooklyn Railway Company.**— Discontinuance of train stops at Kensington station on Culver line.

Complaint Order No. 592.

Hearing Order No. 638.

Opinion of Commissioner Bassett.

Dismissal Order No. 656.

COMPLAINT OF HARRY E. FULLER AND OTHERS

*against*

SOUTH BROOKLYN RAILWAY COMPANY.

Complaint Order No. 592 (see form, note 1) issued June 19th.

Hearing Order No. 638 (see form, note 3) issued July 14th.

Hearing held July 23d.

OPINION OF COMMISSION.

(Adopted August 3, 1908.)

COMMISSIONER EUSTIS:—

This complaint is based on the discontinuance of train stops at Kensington station on the Culver line. It appeared at this hearing that the South Brooklyn Railway Company had discontinued its train stops at the Kensington station and had constructed a new station within some 300 to 500 feet of the old one. It appeared also that until within a short time trains had been stopping at the Kensington station, but that the South Brooklyn Railway Company now purposed to abandon the Kensington station for all its trains during the entire year. Under section 34 of the Railroad Law the South Brooklyn Railway Company has no right to discontinue its Kensington station without obtaining the consent of the Board of Railroad Commissioners.

In April, 1906, application was made to the Board of Railroad Commissioners for leave to discontinue use of this station and the company's application was denied. Coupled with the decision denying the application, however, was a recommendation that the company construct a new station at the point where the new station is now located and that "during the period between May 15th and September 1st, they (the railway company) may be relieved from stopping cars and trains at the present Kensington station, at all other times these cars and trains to be stopped at the Kensington station, as at present."

I believe that the effect of this action by the Board of Railroad Commissioners was to deny the application for absolute abandonment of the Kensington station and to consent to abandoning the station from May 15th to September 1st of each year. The evidence offered at the hearing shows an abandonment of the Kensington sta-

tion during the summer months, for which permission was obtained, and I believe the company to be within its rights in not stopping trains at Kensington station at the present time. Should they continue running by this station after September 1st, action can be taken at that time. The complainants raised the further point that the permission to abandon the Kensington station for the summer months was coupled with a recommendation that a proper station be built in the new location, and that this has not been done. The nature of the station building was not raised in the complaint and cannot be considered in this hearing. I, therefore, recommend that the complaint be dismissed.

**Thereupon the following dismissal order was issued:**

**HARRY E. FULLER ET AL.,** *Complainants,*  
*against*

**SOUTH BROOKLYN RAILWAY COMPANY.**  
*Defendant.*

**Order No. 638.**

DISMISSAL ORDER No. 656.  
August 3, 1908.

**"Discontinuance of train stops at Kensington station."**

This matter coming on upon the report of the hearing had herein on July 23, 1908, and it appearing that the said hearing was held by and pursuant to Hearing Order No. 638 of this Commission, made July 14, 1908, upon the complaint and answer herein, and that the said hearing was held on the matters in said complaint, answer and order specified on July 23, 1908, before Mr. Commissioner Eustis presiding, R. B. Cushing, Esq., appearing for the complainants, Arthur Du Bois, Esq., appearing for the Public Service Commission, and Arthur N. Dutton, Esq., appearing for the South Brooklyn Railway Company.

Esq., appearing for the South Brooklyn Railway Company.  
Now, it being made to appear that the South Brooklyn Railway Company had obtained permission from the Board of Railroad Commissioners to discontinue the use of the Kensington station during the months of June, July and August, and that the discontinuance of train stops at Kensington station complained of occurred during these months, it is

*Ordered*, That the said complaint be and the same hereby is in all respects dismissed and that this order be filed in the office of the Commission. And it is further

*Ordered*, That this order shall be without prejudice for an order for further hearing and action thereon by the Commission, in respect to any of the matters covered by said complaint or by said hearing Order No. 638, or by the proceedings thereon.

**Staten Island Midland Railway Company.—** Failure to stop cars at Steuben street and Richmond road, Concord, Staten Island.

**Case 1003.**

**COMPLAINT OF ERNEST CUOZZO**

*against*

## STATEN ISLAND MIDLAND RAILWAY COMPANY.

Complaint Order (see form, note 1) issued November 27th.  
The matters complained of were satisfied by the company.

**Union Railway Company of New York City and Westchester Electric Railroad Company.**— Discontinuance of through service by the Union Railway Company on White Plains avenue between Two Hundred and Twenty-ninth street and Two Hundred and Forty-second street and failure of said company and Westchester Electric to exchange transfers to provide such service.

Complaint Order No. 775.  
Hearing Order No. 788.  
Dismissal Order No. 824.

**COMPLAINT OF JOHN CLAREY  
against**

**UNION RAILWAY COMPANY OF NEW YORK CITY AND FREDERICK W. WHITBRIDGE, ITS RECEIVER, AND WESTCHESTER ELECTRIC RAILROAD COMPANY AND J. ADDISON YOUNG, ITS RECEIVER.**

Complaint Order No. 775 (see form, note 1) issued October 10th.

Hearing Order No. 788 (see form, note 3) issued October 16th.

Hearings held October 22d and November 5th.

The matters complained of were satisfied by the company and the following dismissal order was issued:

**JOHN CLAREY,  
Complainant,**

**against**

**FREDERICK W. WHITRIDGE, receiver of UNION RAILWAY COMPANY OF NEW YORK CITY, and J. ADDISON YOUNG, receiver of the WEST-CHESTER ELECTRIC RAILROAD COMPANY,  
Defendants.**

**DISMISSAL ORDER No. 824.  
November 10, 1908.**

This matter coming on to be heard on October 22, 1908, pursuant to Hearing Order No. 788, and sessions having been held before John E. Eustis, Commissioner, on said October 22, 1908, and thereafter by adjournment on November 5, 1908, and Albert H. Walker, Esq., having appeared for the Public Service Commission, and William J. Clarke, Esq., of the office of the counsel to the corporation of the City of New York having appeared for the city of New York, and Henry C. Henderson, Esq., having appeared for the complainant, and Evans, Choate & Sherman having appeared for Frederick W. Whitridge, receiver of Union Railway Company of New York city, and Bowers & Sands having appeared for Union Railway Company of New York city, and Arthur M. Johnson, Esq., having appeared for J. Addison Young, receiver of the Westchester Electric Railroad Company; and evidence having been taken upon said hearing; and it having appeared by statement of complainant's counsel that since the hearing began the grievance complained of had been remedied by Union Railway Company of New York city to the satisfaction of the complainant, it is

**Ordered, That the said complaint be, and the same hereby is, dismissed.**

**Union Railway Company.**— Failure to run cars of the White Plains avenue line north to the city line.

**COMPLAINT OF C. E. ARNOLD  
against**

**UNION RAILWAY COMPANY OF NEW YORK CITY AND FREDERICK W. WHITBRIDGE, ITS RECEIVER.**

Complaint Order No. 848 (see form, note 1) issued November 20th.

## OTHER MATTERS RELATING MAINLY TO SERVICE AND EQUIPMENT.

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**Brooklyn, Queens County and Suburban Railroad Company.—**

**Brooklyn Heights Railroad Company.—** Traffic conditions at Graham and Flushing avenues and Broadway, Brooklyn.

**COMPLAINT OF BOARD OF ALDERMEN**

*against*

**BROOKLYN, QUEENS COUNTY AND SUBURBAN  
RAILROAD COMPANY AND THE BROOKLYN  
HEIGHTS RAILROAD COMPANY.**

Complaint Order No. 417 (see form, note 1) issued April 17th.

The companies answered on April 25th claiming that they had a sufficient number of inspectors employed, and the complainant was so informed, but that a hearing would be held if desired. No further action.

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**Dry Dock, East Broadway and Battery Railroad Company.—**

Unsanitary condition of horse cars, Canal street line.

**COMPLAINT OF THE BOARD OF ALDERMEN**

*against*

**DRY DOCK, EAST BROADWAY AND BATTERY  
RAILROAD COMPANY AND FREDERICK W.  
WHITRIDGE, ITS RECEIVER.**

Complaint Order No. 287 (see form, note 1) issued February 25th.

The company answered March 6th stating that immediate attention would be given to the cars in question.

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**Forty-second Street, Manhattanville and St. Nicholas Avenue**

**Railroad Company.—** Lack of heat on Broadway cars.

**COMPLAINT OF JAMES H. CANFIELD**

*against*

**FOORTY-SECOND STREET, MANHATTANVILLE AND  
ST. NICHOLAS AVENUE RAILROAD COMPANY,  
AND FREDERICK W. WHITRIDGE, ITS RE-  
CEIVER.**

Complaint Order No. 302 (see form, note 1) issued March 3d.

Interborough Rapid Transit Company.— Temperature in cars on elevated lines.

In the Matter

of the

Hearing on the motion of the Commission, as to the regulations, practices and service of the INTERBOROUGH RAPID TRANSIT COMPANY, in the respects hereinafter mentioned.

HEARING ORDER No. 250.  
February 11, 1908.

*It is hereby ordered,* That a hearing be had on the 13th day of February, 1908, at 1:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the requirements, practices, equipment, appliances or service of said company upon its elevated lines, in the boroughs of Manhattan and The Bronx, city of New York, in respect to the transportation of persons, are unreasonable, unsafe, improper or inadequate, and if it be so found then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following would be just, reasonable, safe, adequate and proper and whether such changes shall be put in force, observed and used on the line of said company; and also to inquire and determine whether repairs, improvements, changes or additions to or in tracks or other property or device used by said company in the particulars following ought reasonably to be made, in order to promote the security or convenience of the public or in order to secure adequate service or facilities for the transportation of passengers, namely, whether said company should be directed to maintain a temperature of at least 60 degrees Fahrenheit in all cars operated by said company on its elevated lines at all times when said cars are in use for the transportation of passengers, said temperature to be tested at or near the centre of the car at a point not less than three (3) nor more than five (5) feet from the floor of the car and to be maintained without any interference with the regular and proper operation of the ventilators of said cars.

And if such change, improvement and addition be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed, all to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Interborough Rapid Transit Company be given at least two (2) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinabove set forth.

Hearings were held February 13th, 14th, and 19th.

Nassau Electric Railroad Company.— Condition of cars and method of transferring passengers on the Fifth avenue surface line.

COMPLAINT OF TRACY GREY

against

NASSAU ELECTRIC RAILROAD COMPANY.

Complaint Order No. 539 (see form, note 1) issued May 29th.

**New York and Long Island Traction Company and Long Island Traction Company.**— Exchange of transfers at the intersection of lines on New York avenue, near the line of the Brooklyn Aqueduct.

Complaint Order No. 687.  
Extension Order No. 698.  
Extension Order No. 711.

**COMPLAINT OF FREDERICK K. WINSLOW**

*against*

**NEW YORK AND LONG ISLAND TRACTION COMPANY, AND THE LONG ISLAND ELECTRIC COMPANY.**

Complaint Order No. 687 (see form, note 1) issued August 21st.  
Extension Order No. 698 (see form, note 2) issued August 28th.  
Extension Order No. 711 (see form, note 2) issued September 4th.

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**Staten Island Railway Company; United States Express Company.**— Inadequate facilities for handling baggage between Staten Island and Manhattan.

Complaint Order No. 461.  
Opinion of Commissioner McCarroll.

**COMPLAINT OF FRED H. COZZENS**

*against*

**STATEN ISLAND RAILROAD COMPANY, UNITED STATES EXPRESS COMPANY.**

Complaint Order No. 461 (see form, note 1) issued May 5th.

This matter was taken up by Commissioner McCarroll who made the following report:

**OPINION OF COMMISSION.**

**COMMISSIONER MCCARROLL:**—

In this complaint there is disclosed a substantial grievance of the people of Richmond borough. The difficulty, however, does not lie in the direction indicated by the complaint, which is made against the railroad company in connection with the express company.

The investigation shows that the United States Express Company does not make collections of baggage to be forwarded by express on Sundays. There is a further difficulty in the fact that the railroad company can only check the baggage to St. George, instead of checking it through to New York, the company furnishing what is called a "claim check." There seems to be a lack of proper arrangement between the city in the operation of the ferries and the railroad and express companies.

It is a case in which, I judge, that results can best be obtained by correspondence, at least as a preliminary, rather than by other action of the Commission. I have, therefore, instructed my secretary to ascertain facts in this way and report will be made at a later date. Unless action seems to be demanded earlier on the part of the Commission, I would recommend that it be left with the committee for such further action as may seem to be desirable.

May 27, 1908.

Staten Island Midland Railway Company.— Service and equipment.

Final Order No. 186.  
Rehearing Order No. 355.  
Final Order No. 378.  
Extension Order No. 496.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvement in and addition to the service and equipment of the STATEN ISLAND MIDLAND RAILWAY COMPANY.

ORDER No. 186.  
January 14, 1908.

Under Order for Hearing, made November 11, 1907.

This matter coming on upon the report of the hearing had herein on the 21st day of November, 1907, and it appearing that the said hearing was held by and pursuant to an order of this Commission, made November 11, 1907, and returnable on November 21, 1907, and that the said order was duly served upon the Staten Island Midland Railway Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on November 21, 1907, and by an adjournment duly had on November 27, 1907, and by an adjournment duly had on December 4, 1907, and by an adjournment duly had on December 6, 1907, and by adjournment duly had on December 9, 1907, and by adjournment duly had on December 11, 1907, and by adjournment duly had on December 17, 1907, and by adjournment duly had on December 20, 1907, and by adjournment duly had on December 31, 1907, and by adjournment duly had again on December 31, 1907, and at all of said sessions Mr. Commissioner McCarroll presiding, and Abel E. Blackmar, Esq., counsel to the Commission, appearing for the Commission at the session of November 21, 1907, Adrian H. Larkin, Esq., appearing for the Staten Island Midland Railway Company, and at all of the other sessions Arthur Du Bois, Esq., appearing for the Commission, and Adrian H. Larkin, Esq., appearing for the Staten Island Midland Railway Company, and proof having been taken at all of said sessions, except at the two sessions of December 31, 1907.

Now, it being made to appear after the proceedings upon said hearing that changes, improvements and additions in and to the regulations, equipment, appliances and service of the Staten Island Midland Railway Company in respect to the transportation of persons in the First District upon its various lines ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public, or of its employees, or in order to secure adequate service and facilities for the transportation of passengers, and it being made to appear that the changes, additions and improvements in regulations, equipment, appliances and service of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper, and ought reasonably to be made in order to promote the security and convenience of the public and employees.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is Ordered:

1. That the services of the Staten Island Midland Railway Company on its Silver Lake line, be supplemented and changed so that daily, except Sundays, not less than two cars leave St. George within five minutes after the arrival of each ferry boat from Manhattan between the hours of 5 and 7 p. m., and run over Silver Lake and Richmond turnpike route to Port Richmond.
2. That all cars signed to run to St. George or to the New York ferry at St. George be actually run over the elevated structure to the entrance of the ferry and not stopped at Jay street.
3. b. That the company replace with new parts all broken, cracked or defective parts of the Bemis or St. Louis trucks now or recently in use under the closed car bodies Nos. 150 to 163, inclusive.
- c. That the company pass through the shops, making every required repair, all the present open car bodies, trucks, equipment, turning them out in as perfect condition as possible before May 15, 1908.
- d. That the company provide and equip all cars in service with two new automatic circuit breakers of sufficient capacity and modern type.
- e. That the company provide and equip each of its cars in service with gear case, for each motor thereon, and that each gear case shall at all times, be maintained with sufficient gear grease to reduce the noise made by the gear and pinion, to a minimum. The gear case should preferably be maintained half full of grease.

f. That the company provide and maintain in good condition on all of its cars in service, two head lights, of the type used upon the 15-bench open cars, numbered 71 to 90, on the Richmond Light and Railroad Company, or head lights of some other type of not less power that will not project from the dash of the car further than those upon the 15-bench cars of the Richmond Light and Railroad Company, Nos. 71 to 90.

g. That the company provide and maintain in good condition two sets of fenders, complete, upon each car in service.

h. That the company provide and equip each car in service with proper lightning arrest equipment.

j. That the company exercise care that trolley ropes are of sufficient length to permit of trolley wheel following the trolley wire at railway crossings.

k. That no more overhead trolley wire of the size known as No. 6 be erected, but that all new wire construction and all repairs and replacing of old or worn wire be made with No. 60 wire.

m. That the company carefully examine all wooden poles and change those that show a dangerous condition from decay or other cause and reset all poles that have excessive lean.

o. That the company overhaul all sections of track now in such condition that cars cannot be operated at normal speed without severe oscillation, and make track suitable for satisfactory operation of 15-bench open cars. This refers particularly to all sections outside the paved streets.

p. That the company exercise great care that all cars are properly equipped with sand box outfitts and that they are at all times kept supplied with suitable sand.

*And it is further ordered,* That this order shall take effect January 10, 1908, but the provisions in section 3 and its subdivisions shall be completed as soon as possible, but not later than May 15, 1908. This order shall continue in force for a period of two years from and after its date, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed, or in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years.

*And it is further ordered,* That before January 10, 1908, the said Staten Island Midland Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

#### REHEARING ORDER No. 355.

March 20, 1908.

An order having been made and filed herein on January 4, 1908, No. 186, under and pursuant to an order for hearing made November 11, 1907, No. 76, and thereafter having been duly served upon the Staten Island Midland Railway Company, the same to take effect immediately, and in and by said order the said Staten Island Midland Railway Company having been required to notify this Commission before January 10, 1908, whether the terms of said Order No. 186 are accepted and will be obeyed, and the said Staten Island Midland Railway Company having, on March 12, 1908, applied to this Commission for a rehearing in respect to some of the matters contained in said Order No. 186, and sufficient reason for said rehearing being made to appear,

*Ordered,* That the said request for a rehearing be granted and that such rehearing upon the matters contained in said Order No. 186, entered and filed on January 4, 1908, be held on the 25th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising since the making of Order No. 186, whether the original Order No. 186 or any part thereof is in any respect unjust or unwarranted and whether the said Order No. 186 should in any respect be abrogated, changed or modified, and if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of such changes or modifications of the said order and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Staten Island Midland Railway Company be given at least three days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order and that at such hearing the said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held March 25th.

The following final order was issued:

#### ORDER No. 378, MADE AFTER REHEARING.

March 27, 1908.

This matter coming on upon the report of the rehearing of Order No. 186, had herein on the 25th day of March, 1908, and it appearing that the said rehearing

was held by and pursuant to an order of this Commission, dated March 20, 1908, No. 355, and returnable on the 25th day of March, 1908, and that the said order was duly served upon the Staten Island Midland Railway Company and that said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on March 25, 1908, before Mr. Commissioner McCarroll, presiding, Adrian H. Larkin, Esq., appearing for the Staten Island Midland Railway Company and Arthur DuBois, Esq., appearing for the Commission, and the said Staten Island Midland Railway Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses, and testimony having been taken,

Now, after the proceeding upon said rehearing and after consideration of the facts, including those arising since the making of the order, the Commission being of opinion that the original Order No. 186 for the improvement in and additions to the service and equipment of the Staten Island Midland Railway Company should be changed and modified in certain particulars,

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is Ordered, That the Order No. 186, entered January 4, 1908, and directed to the improvement in and additions to the service and equipment of the Staten Island Midland Railway Company, be and the same is changed and modified to read as follows:

#### ORDER NO. 186.

This matter coming on upon the report of the hearing had herein on the 21st day of November, 1907, and it appearing that the said hearing was held by and pursuant to an order of this Commission, made November 11, 1907, and returnable on November 21, 1907, and that the said order was duly served upon the Staten Island Midland Railway Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on November 21, 1907, and by an adjournment duly had on November 27, 1907, and by an adjournment duly had on December 4, 1907, and by an adjournment duly had on December 6, 1907, and by adjournment duly had on December 9, 1907, and by adjournment duly had on December 11, 1907, and by adjournment duly had on December 17, 1907, and by adjournment duly had on December 20, 1907, and by adjournment duly had on December 31, 1907, and by adjournment duly had again on December 31, 1907, and at all of said sessions Mr. Commissioner McCarroll presiding, and Abel E. Blackmar, Esq., Counsel to the Commission, appearing for the Commission at the session of November 21, 1907, Adrian H. Larkin, Esq., appearing for the Staten Island Midland Railway Company, and at all of the other sessions Arthur DuBois, Esq., appearing for the Commission and Adrian H. Larkin, Esq., appearing for the Staten Island Midland Railway Company, and proof having been taken at all of said sessions, except at the two sessions of December 31, 1907,

Now, it being made to appear after the proceedings upon said hearing that changes, improvements and additions in and to the regulations, equipment, appliances and service of the Staten Island Midland Railway Company in respect to the transportation of persons in the First District upon its various lines ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public, or of its employees, or in order to secure adequate service and facilities for the transportation of passengers, and it being made to appear that the changes, additions and improvements in regulations, equipment, appliances and service of the said company, as below set forth, are such as are just, reasonable, safe, adequate and proper, and ought reasonably to be made in order to promote the security and convenience of the public and employees,

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, it is Ordered:

1. That the service of the Staten Island Midland Railway Company, on its Silver Lake line, be supplemented and changed so that daily, except Sundays, not less than two cars leave St. George within five minutes after the arrival of each ferry boat from Manhattan between the hours of 5 and 7 P. M. and run over Silver Lake and Richmond turnpike route to Port Richmond.
2. That all cars signed to run to St. George or to the New York Ferry at St. George be actually run over the elevated structure to the entrance of the ferry and not stopped at Jay street.
3. b. That the company replace with new parts all broken, cracked or defective parts of the Bemis or St. Louis trucks now or recently in use under the closed car bodies number 150 to 163, inclusive.
- c. That the company pass through the shops, making every required repair, all the present open car bodies, trucks, equipment, turning them out in as perfect condition as possible before May 15, 1908.
- d. That the company provide and equip all cars in service with two new automatic circuit breakers of sufficient capacity and modern type, this work on all open cars to be completed by May 15, 1908, and on all closed cars by November 1, 1908.
- e. That the company provide and equip each of its cars in service with a gear case, for each motor thereon, and that each gear case shall at all times, be maintained with sufficient gear grease to reduce the noise made by the gear and pinion, to a minimum. The gear case should preferably be maintained half full of grease.
- f. That the company provide and maintain in good condition on all of its cars in service, two head lights, of the type used upon the fifteen-bench open cars, numbered 71 to 90, on the Richmond Light and Railroad Company, or head lights of some other type of not less power that will not project from the dash of the car further than those upon the fifteen bench cars of the Richmond Light and Railroad Company, Nos. 71 to 90.

**g.** That the Company provide and maintain in good condition two sets of fenders, complete, upon each car in service.

**h.** That the company provide and equip each car in service with proper lightning arrest equipment.

**j.** That the company exercise care that trolley ropes are of sufficient length to permit of trolley wheel following the trolley wire at railway crossings.

**k.** That no more overhead trolley wire of the size known as No. 0 be erected, but that all new wire construction and all repairs and replacing of old or worn wire be made with No. 00 wire.

**n.** That the company carefully examine all wooden poles and change those that show a dangerous condition from decay or other cause and reset all poles that have excessive lean.

**o.** That the company overhaul all sections of track now in such condition that cars cannot be operated at normal speed without severe oscillation, and make track suitable for satisfactory operation of fifteen-bench open cars. This refers particularly to all sections outside the paved streets.

**p.** That the company exercise great care that all cars are properly equipped with sand box outfits and that all are at all times kept supplied with suitable sand.

**And it is further ordered,** That this order shall take effect January 10, 1908, but the provisions in section 3 and its subdivisions, except d, shall be completed as soon as possible, but not later than May 15, 1908. This order shall continue in force for a period of two years from and after its date, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed, or in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years.

**And it is further ordered,** That before January 10, 1908, the said Staten Island Midland Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the time for compliance with a part of the order was extended as appears by the following order:

#### EXTENSION ORDER No. 496.

May 15, 1908.

An order, No. 378, having been made herein on or about the 27th day of March, 1908, ordering and directing, under the terms of section 3 (p) thereof, that the Staten Island Midland Railway Company, on or before the 15th day of May, 1908, equip all cars with sand box outfits, and the said Staten Island Midland Railway Company having, on the 14th day of May, 1908, applied in writing for an extension of such time within which to do the work above mentioned,

Now, on motion made and duly seconded, it is

**Ordered,** That the time of the Staten Island Midland Railway Company within which to equip all cars with sand box outfits, as called for by the terms of section 3 (p) of Order No. 378 above mentioned, be, and the same hereby is, extended to and including the 6th day of June, 1908.

### NUISANCES.

**Flatbush Gas Company.— Erection of a gas tank at Nostrand avenue and Winthrop street, Brooklyn.**

Complaint Order No. 534.

Hearing Order No. 548.

Opinion of Commissioner Bassett.

Dismissal Order No. 600.

**COMPLAINT OF CENTRAL FLATBUSH TAXPAYERS' ASSOCIATION**

*against*

#### FLATBUSH GAS COMPANY.

Complaint Order No. 534 (see form, note 1) issued May 26th.

Hearing Order No. 548 (see form, note 3) issued June 2d.

Hearings were held June 10th, 22d and 24th.

\*[The Commission does not have jurisdiction to prevent the erection of a gas holder in a residential locality.]

\* See footnote, page 9.

## OPINION OF COMMISSION.

(Adopted June 23, 1908.)

**COMMISSIONER BASSETT:**

This is a complaint of residents and local property owners against the erection of a very large gasholder on the land of the defendant, in a locality claimed to be residential. No claim is made that the objection to this holder relates to the service provided by the gas company to its customers or the public. The complaint is based on the fact that the structure will injure the neighborhood both during its building and afterwards. If the proposed gasholder is a common law nuisance, the property owners may appeal to the State courts. If its building or maintenance will affect the health of the people of the locality the State or city board of health has undoubtedly jurisdiction. The welfare and convenience of the people in relation to gas companies is committed to the Public Service Commissions, but this has more especial reference to the public service performed, its adequacy, its quality and its price. The commission in conjunction with its legal department has been unable to discover that it has jurisdiction in this case. Let an order be prepared dismissing the complaint.

Thereupon the following dismissal order was issued:

**CENTRAL FLATBUSH TAXPAYERS' ASSOCIATION,**

**Complainant,**

**DISMISSAL ORDER No. 600.**  
June 23, 1908.

## THE FLATBUSH GAS COMPANY.

*Defendant.*

A complaint having been duly made to the Commission by the Central Flatbush Taxpayers' Association by a petition in writing, wherein an order was requested directing The Flatbush Gas Company, its officers or agents, to take no further steps for the construction of a certain gas tank or holder, and a copy of said petition having been duly forwarded to The Flatbush Gas Company, the defendant, and an order of the Commission having been duly made on May 26, 1908, directing that the matters complained of be satisfied or answered by the defendant, and the defendant having duly filed its answer verified June 1, 1908, and an order having been made on the 2d day of June, 1908, directing that a hearing be had, and said hearing having been held on June 10, 1908, before Hon. Edward M. Bassett, Commissioner, and Mr. Louis Heaton Pink, Mr. Alexander McKinny and Mr. Andrew Colin, appearing as counsel for the complainant, and Mr. John J. Kuhn appearing as counsel for the defendant, and Mr. Henry H. Whitman, Assistant Counsel to the Commission attending, and the Commission being of the opinion after said hearing that the Commission has no jurisdiction to take any action in the premises, it is, on motion of Messrs. Dykman, Oeland and Kuhn, attorneys for the defendant.

*Ordered*, That said complaint be and the same hereby is dismissed, and that this order be filed in the office of the Commission.

**Interborough Rapid Transit Company.**— Smoke nuisance at power house at foot of West Fifty-ninth street.

**Hearing Order No. 553.  
Opinion of Commissioner Eustis.  
Dismissal Order No. 616.**

**In the Matter  
of the**

Hearing on motion of the Commission on the question of repairs or improvements to or changes in motive power of any other property or device used by the INTERBOROUGH RAPID TRANSIT COMPANY in or in connection with the transportation of persons within the First District.

"Smoke nuisance at power house at foot of West 59th Street."

**HEARING ORDER No. 553.**  
**June 5, 1908.**

adjourned at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether repairs or improvements to or changes in any motive power or other property or device used by the Interborough Rapid Transit Company at its power house at the foot of West Fifty-ninth street in or in connection with the transportation of passengers, freight, or property within the First District, ought reasonably to be made, or whether any additions should reasonably be made thereto in order to promote the security or convenience of the public or employees by obviating the emission of black smoke and gases from the power house above mentioned.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That said Interborough Rapid Transit Company be given at least eight days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearing held June 15th.

OPINION OF COMMISSION.

(Adopted June 29, 1908.)

COMMISSIONER EUSTIS:—

This matter was brought on for hearing after complaint made by Mr. Henry D. Hotchkiss. The complainant appeared on the hearing and gave testimony tending to show that the defendant company burned soft coal at its power house at the foot of West Fifty-ninth street and that in consequence thereof a large amount of smoke was emitted from the smoke stacks. Mr. Hotchkiss was of the opinion that the smoke could be prevented by the use of hard coal.

The company admitted the use of soft coal but offered testimony to the effect that hard coal did not possess a sufficient amount of volatile matter to permit of its use for the company's purpose, namely, the running of trains in the subway. It was shown that owing to the fluctuating load caused by the varying demands of the traffic in the subway a fuel containing a large amount of volatile matter was required and that hard coal contained very little volatile matter, whereas soft coal contained a large amount of volatile matter. Mr. Stott, superintendent of motive power of the company, testified that at first the company attempted to use hard coal at this power house but that it was found to contain an insufficient amount of volatile matter and for this reason the company at great expense made such changes in the boilers as were necessary for the purpose of enabling it to use soft coal instead of hard coal and that the company has since used soft coal. He further testified that without the use of soft coal it would be impossible for the company to operate its road.

It further appeared upon the hearing that the company is taking every precaution to prevent the emission of smoke and using the best devices known for the elimination of smoke, and that it is constantly experimenting with new devices for that purpose.

In view of the facts mentioned and in view of the further fact that the complainant admits that there are other sources of smoke in the vicinity mentioned, I am of the opinion that the complaint should be dismissed.

Thereupon the following dismissal order was issued:

DISMISSAL ORDER No. 616.

June 29, 1908.

This matter coming on upon the report of the hearing had herein on June 15, 1908, and it appearing that said hearing was held pursuant to an order of this Commission, No. 553, made on the 5th day of June, 1908, and returnable on the 15th day of June, 1908, and it appearing that said order was issued upon motion of the Commission after the filing of the complaint of Henry D. Hotchkiss, Esq., in regard to the emission of smoke at the power house of said company at the foot of West Fifty-ninth street, and after the filing of the answer of said Interborough Rapid Transit Company thereto; and it appearing that said hearing order was duly served upon said Interborough Rapid Transit Company, and that the said service was by said company duly acknowledged; and it appearing that the said hearing was had by and before the Commission on the matters in said complaint, answer and order specified on the 15th day of June, 1908, before Mr. Commissioner Eustis presiding, Henry D. Hotchkiss, Esq., complainant, appearing in person,

Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission, and Alfred A. Gardner, Esq., general solicitor for said Interborough Rapid Transit Company, appearing for said company; and it having been made to appear after the proceedings on said hearing that said company is experimenting with new devices for the prevention of the emission of smoke, which are likely to result in the substantial elimination of smoke at this power house, and that under the circumstances disclosed upon the hearing herein it would not be advisable for the Commission at the present time to make an order directing any change in the manner of operating said power house;

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered:*

1. That said complaint be and the same hereby is dismissed, and that this order be filed in the office of the Commission.

2. That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by said complaint, answer and order for hearing or the proceedings thereon.

### Long Island Railroad Company.— Smoke in Atlantic avenue tunnel.

#### OPINION OF COMMISSION.

(Adopted December 22, 1908.)

#### COMMISSIONER McCARROLL:—

Following the receipt of these complaints your committee had observations made at several times by inspectors of the inspection bureau in November and December. Their reports showed that the complaints were caused by the operation of some freight trains which are run between the hours of 12 midnight and 4 A. M., usually one or two trains each way, daily, and between the hours of 9:30 A. M. and 4:30 P. M., also one or two each way, and later between 6:30 and 9:30 P. M. They are operated at these hours so as to interfere as little as possible with the passenger trains, which are frequent during the intervals.

The freight trains are moved by steam locomotives, passenger trains by electric power. So long as this is a necessity probably some trouble may not be wholly prevented.

The grade of the railroad is heavy at some of the points of exit from and entrance to the tunnel. Though this is so, the reports showed that the emission of smoke and gas is infrequent. At times, however, the trains operated in the evening period are unusually heavy, requiring two locomotives. From these there were occasionally some smoke and gas. Only once, however, in the observations taken, covering some days, was this observed to what might be considered a very objectionable degree. Altogether the reports showed that care is used to obviate the difficulty as largely as possible and with only a few exceptions does the escape interfere with comfort.

Your committee entered into communication with the president of the railroad and learned that the company is experimenting with various types of electric locomotives, with a view to putting these in service for the freight traffic. Up to the present time, however, decision has not been reached as to the type best adapted to freight movement. Your committee understands that because of the serious danger in freight yards from the third rail in the system now used for the passenger service that has not been found advisable. The company intends to change the power as soon as possible.

In the meantime, it is the conclusion of your committee, whose almost daily personal observation confirms the reports of our inspectors, that the amount of trouble from this cause is usually not sufficient to justify serious complaint and that grounds for any exist only at exceptional times, such as have been indicated.

In order to remove all objection, so far as this may be done, while steam locomotives are in use at all, your committee has recommended to the railroad company to shorten the period in which the evening trains are run by making it an hour later, namely, at 7:30 to 9:30 P. M. instead of 6:30 to 9:30 P. M. and to give special directions to the employees in firing. President Peters has advised that he will give this his careful attention.

Your committee has advised the complainants verbally to this effect. They were largely represented by Mr. Curtis of the Brooklyn office of the New York World.

Your committee, therefore, would recommend that the complaints be dismissed as satisfied.

**New York Edison Company.—Cinder nuisance.**

Opinion of Counsel.

Hearing Order No. 808.

Opinion of Commissioner Maltbie.

**Complaint was made of the cinder nuisance caused by the New York Edison Company.** The question of jurisdiction of the Commission was referred to the counsel to the Commission, who rendered the following opinion:

**OPINION OF COUNSEL.**

NEW YORK, February 8, 1908.

**Public Service Commission for the First District:**

Sirs.—Replying to your communication to Mr. Blackmar, dated December 16, 1907, transmitted by the Secretary, asking for a report upon the matter of the alleged cinder nuisance caused by the Edison Power House at First avenue and Forty-fifth street, in the borough of Manhattan, I beg to report that in my opinion the Commission has jurisdiction of the matter mentioned.

The complaint alleges that the plant of the defendant at Forty-fifth street and First avenue, in the borough of Manhattan, city of New York, constitutes a nuisance because of the emission of cinders from the stacks of the defendant "at times as thick as half" making living conditions in the neighborhood unbearable and resulting in great loss and damage. The complainants ask that the Commission take necessary and prompt measures to prevent the further continuance of this nuisance.

The provisions of the Public Service Commissions Law relating to gas and electrical corporations are contained in Article IV of that law. Section 65 of that article is as follows:

"This article shall apply to the manufacture and furnishing of gas for light, heat, or power and the furnishing of natural gas for light, heat, or power, and the generation, furnishing and transmission of electricity for light, heat or power."

The provisions of section 66 of that article in so far as they are or may be relevant here are as follows:

"Each commission shall within its jurisdiction

1. Have the general supervision of all persons and corporations having authority under any general or special law or under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts or other fixtures in, over, or under the streets, highways and public places of any municipality, for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintain underground conduits or ducts for electrical conductors.

2. Investigate and ascertain from time to time, the quality of gas supplied by persons, corporations and municipalities; examine the methods employed by such persons, corporations, and municipalities in manufacturing and supplying gas or electricity for light, heat or power, and in transmitting the same, and have power to order such improvement as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof, or in the maintenance and operation of the works, wires, poles, lines, conduits, ducts and systems maintained in connection therewith.

5. Examine all persons, corporations and municipalities under its supervision, keep informed as to the methods employed by them in the transaction of their business and see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters."

It may be that a portion of this section should be construed as having reference only to persons using gas or electricity or engaged in the manufacture thereof, but this cannot be said of subdivision 5 of the section. By this subdivision the Commission is given power in case of any violation of law in the maintenance or operation of the property used in the manufacture of gas or electricity to "see" that the law is complied with. And the Commission possesses also all powers necessary or proper to enable it to carry out the purposes of the subdivision.

**Public Service Commissions Law, section 4.**

Assuming the truth of the allegations of the complaint, there can be no doubt that the defendant's power house as thus used is a nuisance and that the maintenance thereof in the manner mentioned is a violation of law.

Cosgwell v. New York, New Haven & Hartford R. R. Co., 103 N. Y. 10.

Bohan v. Port Jervis Gas Light Company, 122 N. Y. 18.

Hill v. Mayor, etc., of New York, 139 N. Y. 493.

Morton v. Mayor, etc., of New York, 140 N. Y. 207.

Garvey v. Long Island Railroad Co., 159 N. Y. 323.

Bly v. Edison Electric Illuminating Co., 172 N. Y. 1.

Pritchard v. Edison Electric Illuminating Co., 179 N. Y. 364.

McCarty v. Natural Carbonic Gas Co., 189 N. Y. 40.

Penal Code, §§ 385, 386, 387.

Greater New York Charter, § 1229.

572 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Section 1220 of the Greater New York Charter provides that,

"The word nuisance, as used in this act, shall be held to embrace public nuisance, as known at common law, or in equity jurisprudence; and it is further enacted that whatever is dangerous to human life or detrimental to health; \* \* \* and whatever renders the air or human food or drink unwholesome are also severally in contemplation of this act nuisances; and all such nuisances are hereby declared illegal."

By section 385 of the Penal Code, "Public Nuisance" is defined as follows:

"A public nuisance is a crime against the order and economy of the state and consists of unlawfully doing an act, or omitting to perform a duty, which act or omission

1. Annoys, injures, or endangers the comfort, repose, health, or safety of any considerable number of persons; \* \* \* or
2. In any way renders a considerable number of persons insecure in life or the use of property."

Respectfully yours,

(Signed) GEO. S. COLEMAN,

Counsel to the Commission.

In the Matter

of the

Hearing on motion of the Commission in regard to  
alleged emission of cinders from the stacks of the  
power house of the New York Edison Company  
near First avenue and Fortieth street.

ORDER No. 808.  
October 27, 1908.

*It is hereby ordered.* That a hearing be had on the 11th day of November, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the power house of the New York Edison Company at First avenue from Thirty-eighth street to Fortieth street, in the borough of Manhattan, city and State of New York, is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of said company's franchise or charter, and particularly to inquire and determine whether cinders are permitted by said company to escape from the stacks of said power house in such quantities as to render the power house a nuisance; and if it be determined that said power house is not maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of said company's franchise or charter, then to inquire and determine what changes, improvements and additions in and to the same ought reasonably to be made in order to promote the security and accommodation of the public and in order to secure compliance by said company with the provisions of law and of its franchise or charter, and to inquire and determine what changes or improvements in the manner of operating said power house ought reasonably to be made for the purposes hereinbefore mentioned.

If any changes, improvements or additions in and to said power house, or if any changes in the manner of operating the same be found to be such as ought to be made, then to determine the nature and extent thereof and what period would be a reasonable time within which the same should be directed to be executed and in what manner the execution of the same should be specified to be made.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*It is further ordered.* That said New York Edison Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held November 11th, 17th, 20th and 25th.

OPINION OF COMMISSION.

(Adopted November 27, 1908.)

COMMISSIONER MALTBY:—

In view of the long adjournment taken in this case, I wish to submit the following report of progress:

The hearings which have been held grew out of a complaint made against the Edison company by a considerable number of the residents in the neighborhood of the two stations located near First avenue and Thirty-ninth street. The complainants, many of whom are property holders, have maintained that since the erection

of these two stations, particularly the later one, they have been greatly annoyed and the value of their property has been affected by the quantities of cinders coming from the stacks of the Edison company. Considerable evidence was presented to establish these facts. While the representatives of the Edison company were unwilling to admit that the emission of cinders constituted a nuisance and that the property holders had sufficient grounds for action against the company, they did admit that it was incumbent upon the company to reduce the quantity of cinders thrown out and to use every possible means to prevent any falling upon the property adjacent to their plants.

This matter was first taken up by the Commission with the Edison company several months ago, and experiments were made, but without materially reducing the inconvenience to the public. Since the present complaint was filed and a hearing ordered, the company has adopted the practice of using as fuel a mixture of hard and soft coal, which has already considerably reduced the nuisance. The company has also prepared plans for the construction of a large chamber, through which the smoke and gases from the furnaces will pass. It is claimed that such a chamber will collect large quantities of cinders and perhaps, with the aid of a fuel mixture, entirely prevent the emission of cinders. I have suggested that, pending the construction of this chamber and further experiments in the use of fuel mixtures, the case be adjourned, and this suggestion has met with the approval of the complainants as well as the company. The complainants have expressed themselves well satisfied with the results recently obtained, which constitute the first relief which they have had since the erection of the plants, and which others have endeavored to secure through suits in the courts.

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### New York City Railway Company.— Storing of cars in streets.

\*[Temporary storing of cars in streets by a street railroad corporation is justified where necessary to enable the company to comply with an order of the commission requiring the overhauling of a great number of cars.]

The Board of Aldermen adopted a resolution requesting the Commission to order the New York City Railway Company to stop storing cars in the street, and the chairman made the following reply thereto on behalf of the Commission:

LETTER OF CHAIRMAN WILLCOX.

May 28, 1908.

Hon. PATRICK F. MCGOWAN, President, Board of Aldermen, City Hall, New York:

DEAR SIR.—In reply to the resolution adopted by the board of aldermen, requesting the Public Service Commission to order the New York City Railway Company to refrain from storing cars on the Lexington avenue line from One Hundred and Sixteenth street to One Hundred and Twenty-ninth street, I beg to state that the matter has been considered by the Commission.

Investigation has developed the following facts: Within the past year or so the New York City Railway Company has lost, by fire, a number of large car barns, which has greatly decreased the capacity of their barns for storing cars. Certain of them are now being rebuilt, and because of this reconstruction it is difficult to use any large portion of the sites for storage purposes. It has become necessary, therefore, to adopt other means and the Commission has made several suggestions, particularly in the direction of the utilization of vacant blocks. But owing to the fact that the surface cars are operated by underground conduit, a large amount of construction work would be necessary for the utilization of such vacant lots as storage yards. If the cars were overhead trolleys, this would be a simple and easy matter, but as these cars must be used every day, the vacant lots could not be adequately equipped to handle all of the cars very much before the barns themselves will have been reconstructed.

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\* See footnote, page 9.

Furthermore, the Commission has directed the receivers to overhaul and repair every one of their cars, amounting to upwards of 2,000 in all. This work has required the employment of a large number of men and a great increase in their shop facilities for repairing and painting the car bodies in the overhauling of the electrical equipments. Much of the space in the car houses which ordinarily might be used for storage has been converted, therefore, into shops.

The Commission has also ordered the companies to operate a larger number of cars than they have been running, which has necessitated the storing of the cars during the night where they can be run out when needed in the morning, and makes it impossible to remove the cars any great distance from the lines upon which they are being used.

The total result of these facts is that it has been necessary for the company to store many of their cars in the streets. We have had this in mind for some time and would gladly have issued an order requiring the adoption of some other method, but it seems impossible to repair the cars as rapidly as the public desires, to operate as many cars as we think should be operated to meet the demands of the public—and the number is being increased from week to week—without temporarily storing cars in streets. The Commission feels positive that when the Board of Aldermen understands the conditions, they will agree with the Commission that it is preferable, temporarily, to undergo the inconvenience due to storing of cars in the streets rather than to interfere with the work of overhauling the cars and to make necessary the operation of a less number from day to day. I wish to assure you that as soon as it is possible to order the companies to cease using the streets for storage purposes, this will be done.

Very respectfully,  
(Signed) W. B. WILLCOX,  
*Chairman.*

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**Metropolitan Street Railway Company.— Use of Macomb's Lane  
as a storage yard.**

COMPLAINT OF W. E. NARTER

against

THE METROPOLITAN STREET RAILWAY COMPANY AND ADRIAN H. JOLINE AND DOUGLAS ROBINSON, ITS RECEIVERS.

Complaint Order No. 690 (see form, note 1) issued August 25th.

The company answered August 28th stating that the storage of cars upon streets was necessitated by the reconstruction of the car houses in which cars had been stored, and that cars were being stored in such localities as to cause least inconvenience to the public.

Nothing further in the matter was heard from the complainant and no further action taken.

**Metropolitan Street Railway Company.**— Storing of cars on Lexington avenue between One Hundred and Sixteenth street and One Hundred and Twenty-ninth street.

Complaint Order No. 677.  
Discontinuance Order No. 713.

**COMPLAINT OF JACOB GUTHORN ET AL.**

*against*

**METROPOLITAN STREET RAILWAY COMPANY  
AND ADRIAN H. JOLINE AND DOUGLAS ROBINSON, ITS RECEIVERS.**

Complaint Order No. 677 (see form, note 1) issued August 14th.

The matters complained of were satisfied by the company; the following discontinuance order was issued:

JACOB GUTHORN ET AL. *Complainants,*  
*against*

METROPOLITAN STREET RAILWAY COMPANY  
and ADRIAN H. JOLINE and DOUGLAS  
ROBINSON. *Defendants.*

DISCONTINUANCE ORDER  
No. 713.  
September 8, 1908.

"Storing of cars on Lexington avenue between One Hundred and Sixteenth street and One Hundred and Twenty-ninth street."

An order, No. 677, having been made herein on or about the 14th day of August, 1908, ordering and directing the Metropolitan Street Railway Company and Adrian H. Joline and Douglas Robinson, its receivers, to answer the complaint herein within a time therein specified, and the said receivers having, on August 21, 1908, made answer thereto, and it appearing from a report made August 31, 1908, that all the cars hitherto stored upon Lexington avenue between One Hundred and Sixteenth and One Hundred and Twenty-ninth streets have been withdrawn from the public streets, and the complainant having, under date of September 8, 1908, expressed his satisfaction with the removal of the cause of complaint above mentioned.

Now, upon motion made and duly seconded, it is  
*Resolved*, That the proceedings herein be, and the same hereby are, discontinued.

**Metropolitan Street Railway Company.**— Storing of cars on Eighth avenue between One Hundred and Fifty-fifth and One Hundred and Fifty-ninth streets.

**COMPLAINT OF SAMUEL S. VAN WAGNER**

*against*

**METROPOLITAN STREET RAILWAY COMPANY,  
AND ADRIAN H. JOLINE AND DOUGLAS  
ROBINSON, ITS RECEIVERS.**

Complaint Order No. 831 (see form, note 1) issued November 11th.

576 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

**Metropolitan Street Railway Company.** — Noise caused by the operation of cars at Fifty-third street and Sixth avenue.

Case 1013, Complaint Order.  
Case 1013, Hearing Order.

**COMPLAINT OF WILLIAM W. HOPPIN**

*against*

**METROPOLITAN STREET RAILWAY COMPANY  
AND ADRIAN H. JOLINE AND DOUGLAS  
ROBINSON, ITS RECEIVERS.**

Complaint Order (see form, note 1) issued December 11th.

Hearing Order (see form, note 3) issued December 29th.

**Nassau Electric Railroad Company; American Railway Traffic Company of New York; Brooklyn Heights Railroad Company.** — Noise caused by cars at curve at Ocean avenue and Avenue F.

Complaint Order No. 295.  
Hearing Order No. 382.  
Final Order No. 442.

**COMPLAINT OF PAUL GORHAM** (as President of the South Midwood Residents' Association)

*against*

**NASSAU ELECTRIC RAILROAD COMPANY, AMERICAN RAILWAY TRAFFIC COMPANY OF NEW YORK, AND BROOKLYN HEIGHTS RAILROAD COMPANY.**

Complaint Order No. 295 (see form, note 1) issued February 28th.

Hearing Order No. 382 (see form, note 3) issued March 31st.

Hearing held April 13th.

The following final order was issued:

**PAUL GORHAM, as President of the South Midwood Residents' Association,** *Complainant,*  
*against*

**NASSAU ELECTRIC RAILROAD COMPANY,  
AMERICAN RAILWAY TRAFFIC COMPANY OF NEW YORK and BROOKLYN HEIGHTS RAILROAD COMPANY,** *Defendants.*

ORDER NO. 442.  
April 28, 1908.

"Noise caused by cars at curve at Ocean avenue and Avenue F."

This matter coming on upon the complaint of Paul Gorham as president of the South Midwood Residents' Association, bearing date the 6th day of January, 1908,

and the answers thereto received March 13, 1908, of the Nassau Electric Railroad Company, the American Railway Traffic Company of New York and of the Brooklyn Heights Railroad Company and the report of the hearing had herein on the 13th day of April, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission made March 31, 1908, and returnable on the 13th day of April, 1908, and that the said order was duly served upon the Nassau Electric Railroad Company, the American Railway Traffic Company of New York and the Brooklyn Heights Railroad Company, and that the said service was by all of the said companies duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on April 13, 1908, and by adjournment duly had on April 20, 1908, at both of which sessions Mr. Commissioner Bassett presided; Paul Gorham, Esq., appearing in person as complainant; Arthur N. Dutton, Esq., appearing for the Nassau Electric Railroad Company and the Brooklyn Heights Railroad Company, and Arthur DuBois, Esq., appearing for the Public Service Commission for the First District;

Now, upon the complaint and answer herein it appearing that the American Railway Traffic Company of New York is not concerned in the matters complained of, and the Commission being of the opinion after the proceedings upon the said hearing that the regulations, practices, equipment, appliances and service of the Nassau Electric Railroad Company and of the Brooklyn Heights Railroad Company in respect to the operation of cars at the corner of Ocean avenue and Avenue F, in the borough of Brooklyn, are in certain particulars unsafe, unreasonable and improper, and in the judgment of the Commission certain changes, improvements and additions thereto being such as ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public, and it being the judgment of the Commission that the changes, additions and improvements in regulations, equipments, appliances and service of the said companies as below set forth are such as are just, reasonable, safe, adequate and proper and ought reasonably to be made to promote the security and convenience of the public:

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is  
*Ordered*,

1. That the complaint herein be in all respects dismissed as to the American Railway Traffic Company of New York.

2. That the Nassau Electric Railway Company and the Brooklyn Heights Railroad Company take the necessary steps to have all curved outside rails on the curve formed by the intersection of Ocean avenue and Avenue F regularly and thoroughly greased at least once in every three hours during the night and day.

3. That the Nassau Electric Railroad Company and the Brooklyn Heights Railroad Company take such other and further steps for the lubrication of the rails at the curve formed by the intersection of Ocean avenue and Avenue F as may be necessary for the reduction of the noise caused by friction of the car wheels against the rails at this point.

*And it is further ordered*, That this order shall take effect on May 5, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years.

*And it is further ordered*, That before May 5, 1908, the said Nassau Electric Railroad Company and the Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

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### Nassau Electric Railroad Company — Brooklyn Heights Railroad Company.— Noise caused by operation of cars of the Bergen street and Nostrand avenue lines.

Case 1004.

COMPLAINT OF E. M. OSTRANDER ET AL.

against

NASSAU ELECTRIC RAILROAD COMPANY,  
BROOKLYN HEIGHTS RAILROAD COMPANY.

Complaint Order (see form, note 1) issued December 1st.

Vol. II — 19

**New York Central and Hudson River Railroad Company.—**  
**Smoke, cinders and noise on the Putnam Division.**

Complaint Order No. 206.  
 Hearing Order No. 229.  
 Final Order No. 289.

**COMPLAINT OF HIBRIDGE TAXPAYERS' ALLIANCE**  
*against*

**THE NEW YORK CENTRAL AND HUDSON RIVER**  
**RAILROAD COMPANY.**

Complaint Order No. 206 (see form, note 1) issued January 17th.  
 Hearing Order No. 229 (see form, note 3) issued January 31st.

Hearings were held February 6th, 14th and 15th.

The following final order was issued:

<p>In the Matter          of the</p> <p>Complaint of FRANCIS P. KENNY, as President of          the Highbridge Taxpayers' Alliance,  <i>Complainant.</i></p> <p>against</p> <p>NEW YORK CENTRAL AND HUDSON RIVER          RAILROAD COMPANY, <i>Defendant.</i></p>	<p>FINAL ORDER No. 289.          February 25, 1908.</p>
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Under Order for Hearing No. 229, dated January  
 31, 1908.

This matter coming on upon the report of the hearing had herein on February 6, 1908, February 14, 1908, and February 15, 1908, and it appearing that the said hearing was held pursuant to Order No. 229 of this Commission, made on the 31st day of January, 1908, and returnable on the 6th day of February, 1908, said hearing having been adjourned from February 6, 1908, to February 14, 1908, and from February 14, 1908, to February 15, 1908; and it appearing that said hearing was had by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on the aforesaid dates before Mr. Commissioner Eustis, presiding; E. V. R. Ketchum, Esq., appearing for the complainant, and E. H. Boles, Esq., appearing for the said railroad company and proof having been taken upon said hearing and it having been stipulated and agreed upon said hearing by and between the parties thereto that an order of this Commission should issue, directing and requiring the said New York Central and Hudson River Railroad Company to burn hard coal on all of its engines used by it on its New York and Putnam Division, while said engines are within the corporate limits of the city of New York, and it having been agreed that such order would be satisfactory to the complainant herein and would be satisfactory to and would be complied with by the said New York Central and Hudson River Railroad Company.

Now, therefore, upon said stipulation and agreement and on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*, That said New York Central and Hudson River Railroad Company be, and it hereby is directed and required to cease and desist from the use of soft coal on any of the engines used by it on its New York and Putnam Division while within the corporate limits of the city of New York and institute and continue the use of hard coal on said engines upon said division while within the corporate limits of the said city of New York and to institute such change within fourteen (14) days from and after the service on said company of a certified copy of this order. This order shall continue in force thereafter until such time as the Public Service Commission for the First District shall otherwise order.

*It is further ordered*, That said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District within five (5) days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

**New York Central and Hudson River Railroad Company.—**  
**Smoke nuisance near One Hundred and Sixty-first street and Ogden avenue.**

Complaint Order No. 554.  
 Discontinuance Order No. 590.

**COMPLAINT OF CLARENCE C. OLNEY**

*against*

**THE NEW YORK CENTRAL AND HUDSON RIVER  
 RAILROAD COMPANY.**

Complaint Order No. 554 (see form, note 1) issued June 5th.  
 The following order of discontinuance was issued:

CLARENCE C. OLNEY, <i>Complainant,</i> <i>against</i> NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY. <i>Defendant.</i>	DISCONTINUANCE ORDER No. 590. June 19, 1908.
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“Smoke nuisance in the vicinity of One Hundred and Sixty-first street and Ogden avenue.”

An order, No. 554, having been made herein on or about the 5th day of June, 1908, ordering and directing the New York Central and Hudson River Railroad Company to answer the complaint herein within a time therein specified, and the complainant herein having on June 15, 1908, notified this Commission that the said New York Central and Hudson River Railroad Company had changed its point of transfer to a locality more agreeable to the residents around One Hundred and Sixty-first street and the Harlem river;

Now, on motion made and duly seconded, it is  
*Resolved*, That proceedings herein be, and the same hereby are, discontinued.

**New York Central and Hudson River Railroad Company.—**  
**Smoke nuisance at One Hundred and Thirty-seventh street and Riverside Drive.**

Complaint Order No. 324.  
 Hearing Order No. 514.  
 Final Order No. 625.  
 Final Order No. 686.

**COMPLAINT OF JOHN R. DAVIES**

*against*

**THE NEW YORK CENTRAL AND HU-  
 SON RIVER RAILROAD.**

Complaint Order No. 324 (see form, note 1) issued March 10th.  
 Hearing Order No. 514 (see form, note 3) issued May 22d.

Hearings held June 2d, 9th, 25th and July 2d.

The following final order was issued:

JOHN R. DAVIES,  
*Complainant,*  
*against*  
NEW YORK CENTRAL AND HUDSON RIVER  
RAILROAD COMPANY,  
*Defendant.*

FINAL ORDER No. 625.  
July 7, 1908.

Smoke nuisance at One Hundred and Thirty-seventh  
street and Riverside drive.

Under Order for Hearing No. 514.

This matter coming on upon the complaint of John R. Davies, bearing date March 9, 1908, and the answer thereto dated March 23, 1908, and the report of the hearing had herein on June 2, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made May 22, 1908, and returnable on June 2, 1908, and that the said order was duly served upon the New York Central and Hudson River Railroad Company, and that said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said complaint and order specified on June 2, 1908, and by adjournment duly had on June 9, 1908, and by adjournment duly had on June 25, 1908, and by adjournment had on July 2, 1908, at all of which sessions Mr. Commissioner Eustis presided; Arthur DuBois, Esq., appearing for the Public Service Commission for the First District, and E. H. Boles, Esq., appearing for the New York Central and Hudson River Railroad Company, and proof having been taken at all of said sessions,

Now, upon the complaint and answer herein, the Commission, being of the opinion after the proceedings upon the said hearing, that the practices, equipment, appliances and service of the New York Central and Hudson River Railroad Company, in respect to the operation of engines near Riverside drive, in the borough of Manhattan, city of New York, are at certain times unlawful, unreasonable and improper, in that soft coal is from time to time used as fuel on engines operating in the borough of Manhattan and in the borough of the Bronx, in the city of New York, and in the judgment of the Commission certain changes and improvements thereto being such as ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered.* 1. That every engine owned or controlled by the New York Central and Hudson River Railroad Company and operated in a northerly direction on the line lying west of Riverside drive and west of the Boulevard Lafayette, be started on its northerly run with a clean, anthracite coal fire and that every such engine shall, in addition, carry an available supply of hard coal sufficient to carry the engine through the city of New York, this amount of additional hard coal to be never less than one ton for each engine, in addition to the amount in the fire box at the beginning of the trip.

2. That the New York Central and Hudson River Railroad Company take such steps as may be necessary to enforce this order of the Commission and to ascertain, from time to time, whether this order is being obeyed by the employees of the company.

*Further ordered.* That this order shall take effect on July 15, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission, in respect of anything herein prescribed:

*Further ordered.* That before July 12, 1908, the said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

The company having on August 19, 1908, petitioned the Commission for a modification of Order No. 625, to permit the use of non-smoke producing fuel other than anthracite coal, the following order amending Order 625 was issued:

## ORDER No. 686, RE-SETTLING FINAL ORDER No. 625.

August 21, 1908

A final order of the Commission, No. 625, having been made and filed herein on or about the 7th day of July, 1908, under and pursuant to an order for a hearing No. 514, upon the complaint of John R. Davies herein and the answer of the New York Central and Hudson River Railroad Company thereto, said order No. 625, ordering and directing the New York Central and Hudson River Railroad Company to take the measures set forth therein to obviate the emission of smoke along its line of track lying west of Riverside drive and west of the Boulevard Lafayette, this said order to take effect on July 15, 1908, and to continue in force for a period of two years from and after the taking effect of the same; and the said New York Central and Hudson River Railroad Company having on the 19th day of August, 1908, by Alexander S. Lyman, its attorney, filed a petition with this Commission, supported by the affidavit of the superintendent of motive power, asking for a re-settlement of the final order No. 625 above mentioned, so as to allow the use of non-smoke producing fuel other than anthracite coal.

Now, on motion made and duly seconded, it is

*Resolved*, That the final order, No. 625, above mentioned be, and the same hereby is, resettled so as to read as follows:

## FINAL ORDER No. 625.

This matter coming on upon the complaint of John R. Davies, bearing date March 9, 1908, and the answer thereto dated March 23, 1908, and the report of the hearing had herein on June 2, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made May 22, 1908, and returnable on June 2, 1908, and that the said order was duly served upon the New York Central and Hudson River Railroad Company and that said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said complaint and order specified on June 2, 1908, and by adjournment duly had on June 9, 1908, and by adjournment duly had on June 25, 1908, and by adjournment duly had on July 2, 1908, at all of which sessions Mr. Commissioner Eustis presided, Arthur DuBois, Esq., appearing for the Public Service Commission for the First District and E. H. Boles, Esq., appearing for the New York Central and Hudson River Railroad Company, and proof having been taken at all of said sessions.

Now, upon the complaint and answer herein, the Commission being of the opinion after the proceedings upon the said hearing, that the practices, equipment, appliances and service of the New York Central and Hudson River Railroad Company in respect to the operation of engines near Riverside drive, in the borough of Manhattan, city of New York, are at certain times unlawful, unreasonable and improper, in that soft coal is from time to time used as fuel on engines operating in the borough of Manhattan and in the borough of the Bronx in the city of New York, and in the judgment of the Commission certain changes and improvements thereto being such as ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*. 1. That every engine owned or controlled by the New York Central and Hudson River Railroad Company and operated in a northerly direction on the line lying west of Riverside drive and west of the Boulevard Lafayette, be started on its northerly run with a clean anthracite coal fire, or fire produced by other smokeless fuel, or with devices preventing the emission of black smoke, if such be discovered, and that every such engine shall, in addition, carry an available supply of hard coal or other smokeless fuel, or other effective smoke preventing device, sufficient to carry the engine through the city of New York, this amount of additional hard coal or other smokeless fuel to be never less than one ton for each engine, or in the case of the use of liquid fuel, of such amount as will be sufficient to carry the engine beyond the northerly limit of the city of New York, in addition to the amount in the fire box at the beginning of the trip;

2. That the New York Central and Hudson River Railroad Company take such steps as may be necessary to enforce this order of the Commission and to ascertain, from time to time, whether this order is being obeyed by the employees of the company.

*Further ordered*, That this order shall take effect on August 21, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission, in respect of anything herein prescribed.

*Further ordered*, That before August 26, 1908, the said New York Central and Hudson River Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

New York, New Haven and Hartford Railroad Company.—  
Smoke nuisance at Harlem river yard.

Hearing Order No. 367.  
Final Order No. 512.  
Extension Order No. 844.

**COMPLAINT OF HENRY G. KOST  
against**

**NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY.**

Hearing Order No. 367 (see form, note 3) issued March 27th.

Hearings were held April 10th, 21st, 29th and May 5th.

The following final order was issued:

**HENRY G. KOST,** *Complainant,*  
*against*

• NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY, *Defendant*

**FINAL ORDER No. 512.**  
**May 22, 1908.**

### **Smoke nuisance at Harlem River Yard.**

Under Hearing Order No. 367, dated March 27,  
1908.

This matter coming on upon the report of the hearing had herein on the 10th day of April, 1908, the 21st day of April, 1908, and 29th day of April, 1908, and the 5th day of May, 1908, and it appearing that said hearing was had pursuant to Order No. 367 of this Commission dated March 27, 1908, issued upon the complaint and answer herein, and that said hearing was had by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on the aforesaid dates, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, Henry G. Kost, Esq., complainant, appearing personally, and William Greenough, Esq., attorney, appearing for said New York, New Haven and Hartford Railroad Company, and proof having been taken upon the said hearing, and it having been made to appear after the proceedings on said hearing that said New York, New Haven and Hartford Railroad Company has done certain acts or things in violation of some provision of law or of the terms and conditions of its franchise or charter, namely, that said company has permitted the emission of dense black smoke from the stacks of its engines while in the Harlem River terminal yard of said company in the city and State of New York, to the annoyance, inconvenience and injury of the complainant and others residing near said yard, and has permitted the use in said yard of an old round-house located in said yard in close proximity to the residences of the complainant and others, in and near which round-house engines of said company are placed by said company and permitted by said company to stand and emit black smoke in the manner hereinbefore mentioned, and it having been made to appear in the judgment of the Commission after the proceedings on said hearing that the emission of said black smoke should be prevented by said company, and that the same could be prevented by said company by the discontinuance of the use of soft coal on any of its engines while within said terminal yard or by the use of coke upon the top of soft coal fires in said engines, and that for the reasons aforesaid the use of the said round-house and of the tracks in and adjacent to the same for the storage of engines under steam should be discontinued at the earliest possible date; and it having been made to appear after the proceedings on said hearing that ten (10) days would be a reasonable time within which the change first above mentioned should be directed to be executed, and that it would be reasonable to require the discontinuance of the use of said round-house and of the tracks in and adjacent to the same for the storage of engines under steam on or before January 1, 1909:

Now, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered:* 1. That said New York, New Haven and Hartford Railroad Company be and it hereby is directed and required to cease and desist from suffering

or permitting in any manner the emission of black smoke from the stacks of the engines in use on the lines of said company at any and all times while said engines shall be standing in or passing through said Harlem river terminal yard.

2. That said New York, New Haven and Hartford Railroad Company be and it hereby is directed and required to cover all soft coal fires in engines in said yard, whether standing still or passing through said yard, with coke and to continually feed and replenish the same with coke during the time said engines shall remain in said yard.

3. That said New York, New Haven and Hartford Railroad Company be and it hereby is directed and required to discontinue the use of the round-house situated in said yard and of the tracks in and adjacent to the same for the storage of engines under steam by or before the first day of January, 1909.

4. That said New York, New Haven and Hartford Railroad Company be and it hereby is directed and required to institute the changes mentioned in subdivisions 1 and 2 above within ten (10) days after service on said company of a certified copy of this order exclusive of the day of service.

5. It is further ordered, That this order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order, and shall be without prejudice to the right of the Commission to institute and hold such other or further investigation or investigations, hearing or hearings, and make such other or further order or orders in the premises as may to the Commission seem just and reasonable.

6. It is further ordered, That said New York, New Haven and Hartford Railroad Company notify the Public Service Commission for the First District within five (5) days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

**EXTENSION ORDER No. 844.**

November 20, 1908.

An order, No. 512, having been made herein on or about the 22d day of May, 1908, ordering and directing the New York, New Haven and Hartford Railroad Company, in paragraph three (3) thereof, to discontinue the use of the round-house situated in the Harlem river yard of said company before the first day of January, 1909, and the said New York, New Haven and Hartford Railroad Company having, on the 31st day of October, 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

Ordered, That the time within which the New York, New Haven and Hartford Railroad Company shall remove the roundhouse above mentioned as directed by paragraph three (3) of Order No. 512 be, and the same hereby is, extended to and including the 1st day of July, 1909.

**New York, New Haven and Hartford Railroad Company.—Unsanitary manner of loading manure cars at the Harlem river yards.**

Complaint Order No. 668.  
Hearing Order No. 790.

**COMPLAINT OF THE SOUTHERN BRONX PROPERTY OWNERS' ASSOCIATION  
against**

**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**

Complaint Order No. 668 (see form, note 1) issued August 7th.

Hearing Order No. 790 (see form, note 3) issued October 20th.

Hearings held November 6th, 13th, 20th, and December 11th.

Adjourned to January 8th, 1909.

**New York, New Haven and Hartford Railroad Company.—**  
**Use of soft coal.**

Complaint Order No. 327.  
 Discontinuance Order No. 393.

**COMPLAINT OF VAN NEST PROPERTY OWNERS'**  
**ASSOCIATION**  
*against*

**NEW YORK, NEW HAVEN AND HARTFORD**  
**RAILROAD COMPANY.**

Complaint Order No. 327 (see form, note 1) issued March 10th.

The matters complained of having been satisfied the following discontinuance order was issued:

**VAN NEST PROPERTY OWNERS' ASSOCIATION**  
 by Frank Huber, Secretary,      *Complainants,*  
*against*

**NEW YORK, NEW HAVEN AND HARTFORD**  
 RAILROAD COMPANY,      *Defendant.*

**DISCONTINUANCE ORDER**  
 No. 393.  
 April 3, 1908.

"Use of soft coal."

An order, No. 327, having been made herein on or about the 10th day of March, 1908, ordering and directing the New York, New Haven and Hartford Railroad Company to answer complaint herein, within a time therein specified, and the said New York, New Haven and Hartford Railroad Company having, on March 19, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied, and the complainant having expressed satisfaction at the action taken by the company.

Now, upon motion made and duly seconded, it is

*Resolved*, That the proceedings herein be, and the same hereby are discontinued.

**South Brooklyn Railway Company.—** Noisy operation of freight  
 and ash cars through Vanderbilt avenue.

Complaint Order No. 685.  
 Hearing Order No. 794.  
 Dismissal Order No. 840.

**COMPLAINT OF ALEXANDER BROWN**  
*against*

**SOUTH BROOKLYN RAILWAY COMPANY.**

Complaint Order No. 685 (see form, note 1) issued August 21st.

Hearing Order No. 794 (see form, note 3) issued October 23d.

Hearing held November 6th.

The complainant expressed satisfaction with the action of the company and with the conditions then existing. The following dismissal order was issued:

ALEXANDER BROWN.  
*against*      *Complainant,*  
 SOUTH BROOKLYN RAILROAD COMPANY,  
*Defendant.*  
 "Noisy operation of freight and ash cars through  
 Vanderbilt avenue, especially at night."

**DISMISSAL ORDER**  
 No. 840.  
 November 17, 1908.

An order of the Commission, No. 794, having been made herein on the 23rd day of October, 1908, directing a hearing on November 6, 1908, in the matter of the noisy operation of freight and ash cars through Vanderbilt avenue, especially at night, and the complainant having expressed himself as satisfied with the action of the company and the conditions at present existing, it is

*Ordered*, That said complaint be, and the same hereby is, dismissed.

**Staten Island Railway Company.— Use of soft coal on locomotives.**

**COMPLAINT OF HARCOURT BULL  
against**

**STATEN ISLAND RAILWAY COMPANY.**

Complaint Order No. 704 (see form, note 1) issued August 28th.

A communication from the complainant was received September 8, 1908, stating, in effect, that matters complained of were satisfied.

**OVERHAULING AND REPAIR OF CARS.**

**Brooklyn Heights Railroad Company.— Vestibuling cars.**

Hearing Order No. 342.  
Final Order No. 381.

In the Matter  
of the

Hearing on the Motion of the Commission as to the  
Regulations, Practices, Equipment and Service of  
the BROOKLYN HEIGHTS RAILROAD COM-  
PANY, in the respects hereinafter mentioned.

HEARING ORDER  
No. 342.  
March 13, 1908.

*It is hereby ordered,* That a hearing be had on the 26th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the said company on its various lines in the city of New York, in respect to the transportation of persons, freight or property within the First District, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the lines of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks or other property or device used by said company, in the particulars following ought reasonably to be made in order to promote the security or convenience of the public or employees, or in order to secure adequate facilities for the transportation of persons, freight or property, namely:

Whether said company should be directed to equip all mail cars and all other cars operated on the lines of said company, which are not so equipped, with a vestibule on each platform similar in construction to the vestibules now installed upon the passenger cars operated by said company.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Heights Railroad Company be given at least ten days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinbefore set forth.

Hearing held March 28th.

The following final order was issued:

**FINAL ORDER No. 381.**

March 31, 1908.

This matter coming on upon the report of the hearing had herein on the 26th day of March, 1908, and it appearing that the said hearing was held pursuant to order No. 342 of this Commission, dated the 13th day of March, 1908, and returnable on the 26th day of March, 1908, at 2:30 o'clock in the afternoon, and it appearing that said hearing was had by and before the Commission on the matters

embraced in said Hearing Order No. 342 on the aforesaid date, before Mr. Commissioner McCarroll presiding, H. M. Chamberlain, Esq., appearing for the Commission, and J. F. Calderwood, Esq., Vice-President and General Manager of said Brooklyn Heights Railroad Company, appearing for said company, and proof having been taken upon said hearing, and it having been stipulated and agreed upon said hearing by said J. F. Calderwood, for and on behalf of said Brooklyn Heights Railroad Company, that said company would comply with all matters mentioned in said Order No. 342, and would equip its mail cars with vestibules similar to those in use on the passenger cars of said company in time for the operation of next season, which should be on or before November 1, 1908, and that an order of this Commission issue directing and requiring the said Brooklyn Heights Railroad Company to equip all its mail cars with vestibules in the manner mentioned on or before the date mentioned, and it having been agreed that said order would be satisfactory to and would be complied with by said Brooklyn Heights Railroad Company.

Now, therefore, upon said stipulation and agreement, and on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered.* That said Brooklyn Heights Railroad Company be and it hereby is directed and required to equip all its mail cars operated on its lines, which are not so equipped, with a vestibule on each platform similar in construction to the vestibules now installed upon the passenger cars operated by said company.

*It is further ordered.* That said company equip all said cars with vestibules in the manner hereinbefore mentioned on or before the 1st day of November, 1908. This order shall continue in force thereafter until such time as the Public Service Commission for the First District shall otherwise order.

*It is further ordered.* That said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District, within five days after the service of this order upon it, whether the terms of this order are accepted and will be obeyed.

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**Brooklyn Rapid Transit Company.— Side doors on elevated railroad cars — Ten-car trains on elevated lines operated over Brooklyn Bridge.**

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In the Matter

of

Recommendations of the Chief Engineer with respect  
to the use of side doors on cars of the BROOK-  
LYN RAPID TRANSIT COMPANY.

ORDER FOR ANSWER  
No. 262.  
February 14, 1908.

*Resolved*, That a copy of the report of Chief Engineer Henry Seaman, under date of January 12, 1908, be sent to the Brooklyn Rapid Transit Company for answer.

The company answered February 25th and assured the Commission of its desire to co-operate with it and the Department of Bridges in bringing into effect the best practicable method of operation over the bridge.

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**Brooklyn Union Elevated Railroad Company.— Air brake equipment.**

Letter of Electrical Engineer.  
Final Order No. 746.

September 25, 1908.

*To the Public Service Commission for the First District:*

The Bureau of Electrical Engineering has completed an investigation into the air brake equipment of the cars operated over the elevated lines of the Brooklyn Union Elevated Railroad Company and reports that such cars should be so equipped as to allow for quick recharging and gradual release.

Respectfully submitted,  
(Signed) A. W. McLIMONT,  
*Electrical Engineer.*

Thereupon the Commission adopted the following resolution:

ORDER No. 746.  
September 25, 1908.

*Resolved*, That the Brooklyn Union Elevated Railroad Company be required to make such changes as will carry out the recommendation contained in the above report.

**Coney Island and Brooklyn Railroad Company.—Defective equipment and poor service on Smith street line.**

Rehearing Order No. 197.  
Opinion of Commissioner Bassett.  
Final Order No. 239.

<b>SOUTH BROOKLYN BOARD OF TRADE,</b> <i>Complainant,</i> <i>against</i> <b>CONEY ISLAND AND BROOKLYN RAILROAD COMPANY,</b> <i>Defendant.</i>	<b>ORDER FOR HEARING</b> No. 197. January 10, 1908.
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Matter of rehearing on matters contained in Order No. 164, entered December 20, 1907.

An order having been made and filed herein December 20, 1907, No. 164, under and pursuant to an order for hearing made November 20, 1907, No. 104, and said Order No. 164 having been duly served upon the Coney Island and Brooklyn Railroad Company, the same to take effect immediately, and the said Coney Island and Brooklyn Railroad Company having, on December 28, 1907, applied in writing to this Commission for a rehearing in respect to some of the matters contained in paragraphs numbered (1), (2) and (3) of said Order No. 164, and said Coney Island and Brooklyn Railroad Company having accepted and undertaken to obey the provisions of said order except as to the matters upon which such rehearing was requested, and sufficient reason for said rehearing being made to appear,

*Ordered*, That said request for hearing be granted and that said rehearing upon the matters contained in said paragraphs numbered (1), (2) and (3) of said Order No. 164, entered and filed on December 20, 1907, be held on the 23d day of January, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine, after such rehearing and after consideration of the facts, including those arising since the making of Order No. 164, whether the original Order No. 164 is unjust or unwarranted in respect to any of the following requirements, viz.:

1. For the maintaining of gear cases half full of gear grease or other lubricant;
  2. For the immediate replacement of flat wheels;
  3. For varnishing the interior of all cars;
- and to determine whether said Order No. 164 shall be abrogated, changed or modified in such respects, and if such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order and to determine the time of taking effect of the order as changed or modified;

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Coney Island and Brooklyn Railroad Company be given at least ten days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered*, That pending such rehearing and the entry of an order by this Commission upon such rehearing, the requirements of said Order No. 164 in respect to the matters hereinabove mentioned be, and the same hereby are stayed.

Hearing held January 23d.

OPINION OF COMMISSION.  
(Adopted February 4, 1908.)

COMMISSIONER BASSETT:—

South Brooklyn Board of Trade, complainant, against Coney Island and Brooklyn Railroad Company, defendant. Matter of rehearing on matters contained in Order No. 164 entered December 20, 1907.

Final Order No. 164 required the Coney Island and Brooklyn Railroad Company to improve their cars as follows:

1. "That all gears and pinions on the cars of said company shall be operated with their gear cases maintained at least half full of gear grease or other lubricant."
2. "That all wheels on the cars of said company that show flat spots or undue wear shall be immediately replaced by wheels in good and proper condition."
3. "That said company shall within one month thoroughly clean and varnish the interior of all its cars and shall hereafter maintain them in a cleanly and sanitary condition."

The defendant on December 28, 1907, requested a rehearing on the items above set forth, claiming that a small amount of grease in each gear case was advisable; that a reasonable opportunity should be afforded the company to change flat wheels for perfect wheels, and that it is not reasonable, practicable or necessary to require the company to varnish the interior of all of its cars. The Commission granted the defendant a rehearing on the above items, appointing the undersigned to take the testimony and report his opinion thereon. Accordingly, a full opportunity was given the defendant to examine additional witnesses. Experts for the South Brooklyn Board of Trade and the Public Service Commission were also heard.

It appears from the testimony that the first application of grease in a gear case is greater in amount than is requisite in later applications. The reason for this is that a large amount of the grease is thrown up in the case and adheres to the top and sides. If after the original application the gear case were filled up to the center point of the axle, which is the construction placed upon the order by the defendant, there would be a tendency for the grease to run out at the axle joint. The evidence shows that if enough grease is at all times kept in the gear case, so that the teeth of the gear wheel can run in it, that will be sufficient. The order should be changed in this particular, so that it will require that the lower half of the gear case shall be maintained at all times half full of gear grease or other proper lubricant.

The item in the original final order regarding replacing of flat wheels should remain as it now stands.

It appears to me that the strict compliance with present final order, which requires varnishing of the interior of all of the cars, involves an unnecessary amount of work in some cases and probably too long a withdrawal of cars from actual service. It would seem more reasonable to require the interiors of the cars to be varnished where not now varnished. Many of the cars need to have work done upon their interiors and cleaning alone is not enough. In many cases rubbing down with crude oil after washing with soda ash is not enough, because an unprotected surface of natural wood would be left, which is incapable of being kept clean. Such parts of each car should be varnished, and the whole of the interior of each car should present a cleanly appearance, with all exposed natural wood covered with a proper coat of varnish.

Thereupon the following final order was issued:

ORDER No. 230.  
February 4, 1908.

An order having been made and filed herein the 20th day of December, 1907, being Order No. 164, under and pursuant to an order for hearing made the 20th day of November, 1907, and said Order No. 164 having been duly served upon the Coney Island and Brooklyn Railroad Company, and said Coney Island and Brooklyn Railroad Company having accepted said Order No. 164 in part, but having applied in writing to this Commission for a modification of paragraphs numbered (1), (2) and (3) of said Order No. 164, and an order having been made and filed the 10th day of January, 1908, returnable January 23, 1908, being Order No. 197, directing a rehearing of the matters contained in said paragraphs numbered (1), (2) and (3) of said Order No. 164, and it appearing that said rehearing was duly held by and before the Commission on the matters in said Order No. 197 specified on the 23d day of January, 1908, Mr. Commissioner Bassett presiding, and proof being taken, and Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission, and John J. Kuhn, Esq., appearing for the railroad company.

Now, it being made to appear after the proceedings upon said rehearing that it is just and proper that said Order No. 164 should be modified in the manner hereinafter set forth;

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*, That paragraph numbered (1) of said Order No. 164, made the 20th day of December, 1907, be, and the same hereby is, modified so as to read as follows:

"(1) That the axle gears and armature pinions on the cars of said company shall within one month after the date of this order be replaced by new gears and pinions where the teeth thereof are worn to less than one-sixteenth of an inch on the top, and that hereafter no gears and pinions shall be used the teeth of which present a smaller top than one-sixteenth of an inch; that all gears and pinions on the cars of said company shall be operated with the lower half of the gear case from the bottom of the case to the axle opening, maintained half full of lubricant when the car is at rest."

*And it is further ordered*, That paragraph numbered (3) of said Order No. 164 be, and the same hereby is, modified so as to read as follows:

"(8) That said company shall by or before the 1st day of March, 1908, thoroughly clean the interior of all its cars and shall revarnish the same wherever the varnish shall be worn away or otherwise impaired, and that said company shall hereafter maintain said cars in a cleanly and sanitary condition; that within one month from the date of this order, the seats in the closed cars that now have backs and seats covered with carpet shall have this carpet removed and the backs and seats covered with rattan, and that this covering shall be maintained in a cleanly and sanitary condition."

*And it is further ordered.* That except as to the portions hereinbefore modified, said Order No. 184 shall remain in full force and effect until modified by the further order of this Commission.

*And it is further ordered.* That this order shall take effect immediately.

*And it is further ordered.* That within five days the said Coney Island and Brooklyn Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

**Coney Island and Brooklyn Railroad Company.— Automatic circuit breakers; new car bodies.**

Hearing Order No. 203.

Opinion of Commissioner Bassett.

Final Order No. 255.

Extension Order No. 268.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvements in and additions to the equipment of the CONEY ISLAND AND BROOKLYN RAILROAD COMPANY, in the particulars hereinbelow mentioned.

ORDER FOR HEARING

No. 203.

January 14, 1908.

*It is hereby ordered.* That a hearing be had on the 23d day of January, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment and appliances of the Coney Island and Brooklyn Railroad Company in respect to the transportation of persons in the First District are unsafe, improper or inadequate, and if such be found to be the fact then to determine whether changes in said regulations, practices, equipment and appliances in the particulars following would be just, reasonable, safe, adequate and proper, and whether such changes should be put in force, observed and used on the line of said company, and also to inquire and determine whether improvements, changes or additions to or in the motive power or other property or device used by said company in the particulars following ought reasonably to be made in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers, namely:

Whether said company should be directed to equip each of its cars now in service or hereafter to be put in service with two automatic circuit breakers of modern type and of first-class quality and efficiency; and to arrange said circuit breakers in multiple on each car; and at all times to maintain both of said circuit breakers on each car in good and perfect repair and keep the same properly adjusted for the capacity of the motor on the car on which they are placed.

And if such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said Coney Island and Brooklyn Railroad Company be given at least eight days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held January 23d, 29th and February 5th.

## OPINION OF COMMISSION.

(Adopted February 11, 1908.)

COMMISSIONER BASSETT:—

By Order No. 21 the operating company was required to operate and equip its cars in service with improved circuit breakers, either such as are made by the General Electric Company or such as are equivalent thereto, on or before November 15, 1907. This order was loosely drawn in that it did not specify how many automatic circuit breakers should be placed on each car. The operating company claims to have understood that the placing of one automatic circuit breaker on each car was sufficient. Modern practice requires two automatic circuit breakers on each car, for reasons that are more fully stated in my opinion filed at the close of hearings in Order No. 166.

As the time is already becoming short for this company to procure and equip its closed cars with two automatic circuit breakers each before the warm weather shall arrive, and as the public will suffer no great injury for a few months by reason of the operating of the closed cars in some cases with only one automatic circuit breaker, I am of the opinion that the equipment of all closed cars in service with two automatic circuit breakers of modern type may be postponed until the closed cars go into service in the fall of 1908.

Let an order be prepared accordingly.

Thereupon the following final order was issued:

## FINAL ORDER No. 255, AFTER HEARING ORDER No. 203.

February 11, 1908.

This matter coming on upon the report of the hearing had herein on the 23d day of January, and by adjournment, on the 29th day of January and the 5th day of February, 1908, and it appearing that the said hearing was held by and pursuant to an order for a hearing No. 203, made the 14th day of January, 1908, and returnable on the 23d day of January, 1908, and that the said Order No. 203 was duly served upon the Coney Island and Brooklyn Railroad Company and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified, Mr. Commissioner Bassett presiding, and Mr. Backus appearing for the Commission; and John J. Kuhn, Esq., and Mr. Britton appearing for the company.

Now, it being made to appear after the proceedings upon said hearing that it is just, reasonable and proper that the Coney Island and Brooklyn Railroad Company should be directed to make the additions to its appliances and equipment below set forth, in order to promote the security and convenience of the public and employees of said company:

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*, That the said Coney Island and Brooklyn Railroad Company shall, before the closed cars go into service in the fall for the winter season of 1908-1909, provide and equip all of the said closed cars in service with two automatic circuit breakers of modern type, and connect said circuit breakers in multiple on each car and at all times to maintain both of said circuit breakers on each car in good and perfect repair and keep the same properly adjusted for the capacity of the motors of the car on which they are placed, and that the circuit breaker over the motorman's head shall at all times be the one operated. Further it is

*Ordered*, That within five days after service upon it of this order the said Coney Island and Brooklyn Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

## EXTENSION ORDER No. 268.

February 18, 1908.

An order of the Commission, No. 60, having been made herein on or about the 30th day of October, 1907, requiring the Coney Island and Brooklyn Railroad Company to provide ten new car bodies for use on its Smith street line on or about the 1st day of February, 1908, and said Coney Island and Brooklyn Railroad Company having, on or about the 17th day of February, 1908, applied in writing for an extension of such time,

Now, on motion, it is

*Ordered*, That the time of the Coney Island and Brooklyn Railroad Company within which to procure and put in operation the car bodies above mentioned be and the same hereby is, extended to and including the 15th day of March, 1908.

**Coney Island and Brooklyn Railroad Company.—Inspection,  
overhauling, repair and equipment of cars.**

Hearing Order No. 271.  
Final Order No. 433.  
Rehearing Order No. 563.  
Final Order No. 596.  
Extension Order No. 779.

In the Matter  
of the

Hearing on the motion of the Commission on the question of additions, repairs and improvements required to the rolling stock, equipment, overhead trolley construction and feeder wire system of the CONEY ISLAND AND BROOKLYN RAILROAD COMPANY, in the particulars hereinafter set forth.

ORDER FOR HEARING  
No. 271.  
February 18, 1908.

*It is hereby ordered,* That a hearing be held on the 6th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment and appliances of the Coney Island and Brooklyn Railroad Company in respect of transportation of persons in the First District are unsafe, improper and inadequate and whether additions, repairs and improvements to the rolling stock, equipment, overhead trolley construction and feeder wire system of said company ought reasonably to be made, in order to promote the security and convenience of the public or employees, and in order to secure adequate service and facilities in the transportation of passengers and property, and if such be found to be the fact, then to determine whether additions, repairs and improvements therein as hereinafter set forth are such as would be just, reasonable, safe, adequate and proper and ought reasonably to be made to promote such security and convenience of the public or employees and in order to secure adequate service and facilities for the transportation of passengers and property, that is to say:

All open and closed cars of said company should receive a thorough inspection covering car body, motor and electric equipment, wiring and trucks. All defects should be carefully noted and the cars sent through the various shops for an overhauling which, when complete, will place the cars in a first-class operating and practically new condition, and when so completed, said cars should thereafter be overhauled at periods which will insure the future up-keep and proper operation of equipment so as properly to serve the public.

The following should not be construed as detailed working specifications, but merely as illustrative of the intention of the Commission and the scope and meaning of this order.

**INSPECTION.**

By a thorough inspection and general overhauling of the car body and its entire equipment, it is intended that each car should be placed over a pit, seats and trap doors removed and covers taken off to facilitate careful inspection of motors, which should be made by competent engineers and not by car house employees.

**CAR BODY.**

Where the car body must be completely repainted as well as varnished, it should be sent first through the carpenter shop to have all the defects of the woodwork repaired. Special care should be given to the inspection of all car bodies, covering frame, floor, moulding stanchions, panels, roofs and hoods, and in every case where the woodwork and other material is not in sound condition, such part should be replaced, strengthened and made practically new. All metal work pertaining to car bodies should be renewed if in defective state and the various parts of platforms, doors, windows, and roofs should be given the same careful renewal.

**HEAD-LIGHTS.**

All cars in service should be supplied with one incandescent head-light, located on each dash of the car. The head-light must be of a type which does not project in front of dash more than two (2) inches. All head-lights should be overhauled and maintained in a fit condition with new reflectors where necessary, broken glass replaced and new lamps substituted for those below normal candle power.

**WHEEL GUARDS.**

All cars in service should be provided with "pick up" wheel guards of modern type, placed in front of the wheels at each end of the car.

**WIRING.**

All means possible to improve and perfect wiring, hanging and placing of equipment appliances should be used and a universal system of wiring adopted.

**BRASSES.**

All brasses throughout the cars should be renewed. Armature and axle shafts and other bearing parts should be normal.

**COMMUTATORS.**

All commutators should be turned and put in first-class condition and when abnormally worn should be renewed.

**FIELD COILS AND ARMATURE WINDINGS.**

These should be tested for insulation and if found to be below normal, should be replaced with new ones. They should all be thoroughly cleaned and painted.

**CONTROLLERS.**

Controllers should have all contacts and other parts renewed that show any indication of abnormal wear. Connections should be tightened and the controller thoroughly cleaned and painted.

**AUTOMATIC CIRCUIT BREAKERS.**

These should be tested and maintained operative for the proper load, corresponding to the motor capacity of the car.

**RESISTANCES.**

Resistances should be carefully tested and any section not up to the standard renewed, and a form of insulating hanger used so that the resistance will not be bolted directly to the bottom of the car when in line with the splash of the wheel. There should be sufficient space between the resistance and the car floor to prevent danger to the woodwork of the car and also to increase insulation.

**TRUCKS.**

All trucks should be thoroughly cleaned and lined. All broken, weak, sagging, twisted, worn or otherwise defective parts should be replaced with new ones and not merely repaired, except where defects are very slight, especially all springs should be renewed where the normal effectiveness has been lost.

**MOTOR SUSPENSION.**

All motor suspensions should be completely reconstructed, missing parts supplied, springs that have lost their normal effectiveness should be replaced and all adjustments properly made.

**BRAKES.**

All cars in service should be supplied with double chain multiplying power brakes, and all brake mechanisms should be given careful inspection and improvements made in the mechanism and form at present employed and the entire brake equipment should be maintained always in first-class operative condition.

**LIGHTNING ARRESTERS AND CUT-OUTS.**

All open cars in service should be equipped with one modern lightning arrester outfit, properly connected and kept always in an operative condition, and all lightning arresters and cut-outs should be given most careful inspection and placed and maintained in first-class operative condition, and such sections of the line or the road which at the present time have insufficient protection should be supplied with lightning arresters.

**AXLE GEAR WHEELS, ARMATURE PINIONS AND CAR WHEELS.**

These should in every instance be renewed where any indication is found of abnormal wear. All gears and pinions should be replaced where the teeth are worn down to less than one-sixteenth (1/16) of an inch on top, and gear cases should be maintained tight, so as to prevent as much as possible the lubricating grease from being thrown out.

**TIME.**

The company should be able to create facilities and organize a reconstruction department so as to pass each of its open car bodies and equipment through the shops for the overhauling and renewal as specified above, on or before April 15, 1908, and all closed car bodies and equipment should receive the same overhauling and renewal process before going into service for the season of 1908-1909.

**NOTICE.**

When any car has been overhauled and prepared for service as above specified, notice of that fact in writing should be sent to the Commission in a form to be prescribed by it, stating the time and place where the car is to be tested, to the end that the engineers of the Commission may attend.

**"RUN-IN" BOOK.**

The company should provide a run-in book supplied with a carbon sheet and envelope, and this carbon sheet should be mailed to the Equipment and Inspection Bureau of the Commission daily.

**OVERHEAD TROLLEY CONSTRUCTION.**

The entire trolley wire system should be carefully inspected and every part showing excessive wear should be renewed. This refers particularly to the wires on curves, cross-overs and switches, also to the entrance to frogs, switches, section insulators, splicing cars, cross-overs and to points where the trolley joins any of the overhead appliances. All trolley wires should at all times be maintained at a proper tension, so as to prevent excessive sag between supports and should be maintained at a uniform height above the track, where possible. All span wires, pull-offs and strain wires should be straightened and the slack taken up, and all wires must be immediately renewed which show corrosion, improper connections or any other imperfections.

**OVERHEAD APPLIANCES.**

These should be carefully inspected and where found lacking normal insulation or strength or otherwise defective, should be replaced or repaired, double insulation between all live wires and poles should be made.

**FEEDER WIRES.**

The entire feeder wire system should be carefully inspected and all parts showing insufficient insulation or defective construction should be replaced or repaired.

**POLES.**

Attention should be given to the cleaning and repainting of substantially all the poles throughout the company's system and particularly to the replacing of deteriorated poles.

**NEW EQUIPMENT.**

The company should be required to purchase ten (10) complete car equipments, each including two (2) 50-H. P. motors; ten (10) new trucks of satisfactory design adapted to carry such motors; and ten (10) new trucks of like design and adapted to the future substitution of axles suitable for the motors above required, but to be now supplied with axles for mounting the present equipment.

And if it be found that any such improvements, repairs and additions are such as ought to be made or furnished as aforesaid, then to determine what period would be reasonable time within which the same should be directed to be executed and in what manner execution of the same should be directed to be made.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable, and it is further

*Ordered*, That the Coney Island and Brooklyn Railroad Company shall be given at least ten (10) days notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing it be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held March 6th, 17th and 31st.

The following final order was issued:

**FINAL ORDER No. 433.**

April 24, 1908.

This matter coming on upon the report of the hearing had herein on the 6th day of March, 1908, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order for hearing No. 271, made the 18th day of February, 1908, and returnable on the 6th day of March, 1908, and that the said order No. 271 was duly served upon the Coney Island and Brooklyn Railroad Company, and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on the 6th day of March, 1908, and by adjournment duly had on the 17th day of March, 1908, and by adjournment duly had on the 31st day of March, 1908, Mr. Commissioner Bassett presiding at each of said sessions, and Grosvenor H. Backus, assistant counsel, appearing for the Commission, and John J. Kuhn, Esq., and E. D. Kelly, Esq., appearing for said Coney Island and Brooklyn Railroad Company, and proof being taken,

Now, it being made to appear, after the proceedings upon said hearing, that the regulations, practices, equipment and appliances of the Coney Island and Brooklyn Railroad Company, in respect to the transportation of persons in the First District are unsafe, improper and inadequate, and that the additions, repairs and improvements to the rolling stock, equipment, overhead trolley construction and feeder wire system of said company, hereinafter specified, ought reasonably to be made in order to promote the security and convenience of the public, and in order to secure adequate service and facilities in the transportation of passengers,

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*: (1) That the said Coney Island and Brooklyn Railroad Company, make a thorough inspection of all its open and closed cars, covering car bodies, motor and electric equipment, wiring and trucks; that all defects are to be carefully noted and the cars sent through the various shops for an overhauling which, when complete, will place the cars in a first-class operating and renovated condition; and that when so completed said cars shall thereafter be overhauled at periods which will insure the future up-keep and proper operation of equipment so as properly to serve the public.

The following directions are given, not as detailed working specifications, but merely as illustrative of the intention of the Commission and of the scope and meaning of this order.

**INSPECTION.**

By a thorough inspection and general overhauling of the car bodies and its entire equipment, it is intended that each car should be placed over a pit, seats and trap doors removed and covers taken off to facilitate careful inspection of motors which should be made by a competent superintendent and not by car house employees.

## 594 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

### CAR BODY.

Where the car body must be completely repainted as well as varnished, it should be sent first through the carpenter shop to have all the defects of the wood-work repaired. Special attention should be given to the inspection of all car bodies, covering frame, floor, moulding, stanchions, panels, roofs and hoods, and in every case where the woodwork and other material is not in sound condition, such part should be replaced. All metal work pertaining to car bodies should be renewed if in a defective state, and the various parts of platforms, doors, windows and roofs should be given the same careful renewal.

### HEAD-LIGHTS.

All cars in service should be supplied with one incandescent head-light, located on each dash of the car. The head-light must be of a type which does not project in front of the dash more than three inches. All head-lights should be overhauled and maintained in a fit condition with new reflectors where necessary, broken glass replaced and new lamps substituted for those below normal candle power.

### WIRING.

All means possible to improve and perfect wiring, hanging and placing of equipment appliances should be used and a universal system of wiring adopted.

### BRASSES.

All brasses throughout the cars should be renewed where necessary. Armature and axle shafts and other bearing parts should be normal.

### COMMUTATORS.

All commutators should be turned where the service is uneven and put in first-class condition, and when abnormally worn should be renewed.

### FIELD COILS AND ARMATURE WINDINGS.

These should be tested for insulation and if found to be below normal, should be replaced with new ones. They should all be thoroughly cleaned and painted.

### CONTROLLERS.

Controllers should have all contacts and other parts renewed that show any indication of abnormal wear. Connections should be tightened and the controller thoroughly cleaned and painted.

### AUTOMATIC CIRCUIT BREAKERS.

These should be tested and maintained operative for the proper load, corresponding to the motor capacity of the car.

### RESISTANCES.

Resistances should be carefully tested and any section not up to the standard renewed, and a form of insulating hanger used so that the resistance will not be belted directly to the bottom of the car when in line with the splash of the wheel. There should be sufficient space between the resistance and the car floor to prevent danger to the woodwork of the car and also to increase insulation.

### TRUCKS.

All trucks should be thoroughly cleaned and lined. All broken, weak, sagging, twisted, worn or otherwise defective parts should be replaced with new ones and not merely repaired, except where defects are very slight, especially all springs should be renewed where the normal effectiveness has been lost.

### MOTOR SUSPENSION.

All motor suspensions should be completely overhauled, missing parts supplied, springs that have lost their normal effectiveness replaced and all adjustments properly made.

### BRAKES.

All cars in service should be supplied with double chain brakes and all brake mechanisms should be given careful inspection and improvements made in the mechanism and form at present employed and the entire brake equipment should be maintained always in first-class operative condition.

### LIGHTNING ARRESTERS AND CUT-OUTS.

All open cars in service should be equipped with one modern lightning arrester outfit, properly connected and kept always in operative condition and all lightning arrestors and cut-outs should be given most careful inspection and placed and maintained in first-class operative condition and such sections of the line of the road which at the present time have insufficient protection should be supplied with lightning arresters.

### AXLE GEAR WHEELS, ARMATURE PINIONS AND CAR WHEELS.

These should in every instance be renewed where any indication is found of abnormal wear. All gears and pinions should be replaced where the teeth are worn down to less than one-sixteenth (1/16) of an inch on top, and gear cases should be maintained tight, so as to prevent as much as possible the lubricating grease from being thrown out.

### TIME.

The company should create facilities and organize a reconstruction department so as to pass each of its open car bodies and equipment through the shops for the overhauling and renewing, as specified above, on or before the 31st day of May, 1908, and all closed car bodies and equipment should receive the same overhauling and renewal process before going into service for the season of 1908-1909.

When any car has been overhauled and prepared for service, as above specified, notice of that fact in writing should be sent to the Commission, stating the time and place where the car is to be tested, to the end that the engineers of the Commission may attend.

**"RUN-IN" BOOK.**

The company should provide a run-in book supplied with a carbon sheet and envelope and this carbon sheet should be mailed to the equipment and inspection bureau of the Commission daily.

**OVERHEAD TROLLEY CONSTRUCTION.**

The entire trolley wire system should be carefully inspected and every part showing excessive wear should be renewed. This refers particularly to the wires on curves, cross-overs and switches, also to the entrance to frogs, switches, section insulators, splicing cars, cross-overs and to points where the trolley joins and or the overhead appliances. All trolley wires should at all times be maintained at a proper tension, so as to prevent excessive sag between supports and should be maintained at a uniform height above the track, where possible. All span wires, pulloffs and strain wires should be straightened and the slack taken up and all wires must be immediately renewed which show corrosion, improper connections or any other imperfection.

**OVERHEAD APPLIANCES.**

These should be carefully inspected and where found lacking normal insulation or strength or otherwise defective, should be replaced or repaired, double insulation between all live wires and poles should be made.

**FEEDER WIRES.**

The entire feeder wire system should be carefully inspected and all parts showing insufficient insulation or defective construction should be replaced or repaired.

**POLES.**

Attention should be given to the cleaning and repairing of substantially all the poles throughout the company's system and particularly to the replacing of deteriorated poles.

*And it is further ordered.* That this order shall take effect immediately and remain in force until modified by the further order of this Commission.

*And it is further ordered.* That on or before the 27th day of April, 1908, the Coney Island and Brooklyn Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

## REHEARING ORDER No. 563.

June 9, 1908.

An order, No. 433, having been made and filed herein on the 24th day of April, 1908, under and pursuant to an order for a hearing, No. 271, made February 18, 1908, and thereafter having been duly served upon the Coney Island and Brooklyn Railroad Company, the same to take effect immediately; and in and by said order the direction having been given to said Coney Island and Brooklyn Railroad Company that all cars in service should be supplied with double chain brakes, and the said Coney Island and Brooklyn Railroad Company having on June 2, 1908, applied in writing to this Commission for a rehearing in respect to the direction above mentioned in said Order No. 433, and sufficient reason for said rehearing having been made to appear,

*Ordered.* That said request for rehearing be granted and that the said rehearing upon the matters contained in said Order No. 433, entered and filed on April 24, 1908, be held on the 18th day of June, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the Order No. 433 whether the original Order No. 433 should be abrogated, changed or modified with respect to said direction as to the supplying of all cars in service with double chain brakes.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That the said Coney Island and Brooklyn Railroad Company be given at least five (5) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered.* That the time of the said Coney Island and Brooklyn Railroad Company within which to comply with the terms of said Order No. 433, in so far as said order refers to double chains on brakes, be and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held June 18th.

The following final order was issued:

## FINAL ORDER No. 596 AFTER REHEARING.

June 23, 1908.

This matter coming on upon the report of the rehearing of Order No. 433 had herein on the 18th day of June, 1908, and it appearing that said rehearing was

## 596 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

held by and pursuant to an order of this Commission, dated June 9, 1908, said order being Order No. 563 returnable on the 18th day of June, 1908, and it further appearing that the said order was duly served upon the Coney Island and Brooklyn Railroad Company, and that said service was by it duly acknowledged, and that the said rehearing was held by and before the Commission on the matters in said order for rehearing specified on June 18, 1908, before Mr. Commissioner Bassett presiding, Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission, and Slaughter W. Huff, president, appearing for the Coney Island and Brooklyn Railroad Company, and the said Coney Island and Brooklyn Railroad Company having been afforded reasonable opportunity for presenting evidence and examining and cross-examining witnesses, and proof having been taken,

Now, after the proceedings upon said rehearing, and after consideration of the facts including those facts arising since the making of the order, the Commission being of the opinion that the original order, No. 433, should be changed and modified in certain particulars so as not to require that the open cars at present in service be supplied with double chain brakes, this modification being made, however, with the full expectation that new open cars when ordered will have brakes of a type which will allow double chains to be put upon them.

Therefore, on motion made and duly seconded, it is

*Ordered*, That Order No. 433, made April 24, 1908, and directed to the making of additions, repairs, and improvements in the rolling stock, equipment, overhead trolley construction, and feeder wire system of the Coney Island and Brooklyn Railroad Company be, and the same hereby is, changed and modified so as to read as follows:

### FINAL ORDER No. 433.

This matter coming upon the report of the hearing had herein on the 6th day of March, 1908, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order for hearing No. 271, made the 18th day of February, 1908, and returnable on the 6th day of March, 1908, and that the said Order No. 271 was duly served upon the Coney Island and Brooklyn Railroad Company, and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on the 6th day of March, 1908, and by adjournment duly had on the 17th day of March, 1908, and by adjournment duly had on the 31st day of March, 1908, Mr. Commissioner Bassett presiding at each of said sessions, and Grosvenor H. Backus, assistant counsel, appearing for the Commission, and John J. Kuhn, Esq., and E. D. Kelly, Esq., appearing for said Coney Island and Brooklyn Railroad Company, and proof being taken,

Now, it being made to appear, after the proceedings upon said hearing, that the regulations, practices, equipment, and appliances of the Coney Island and Brooklyn Railroad Company, in respect to the transportation of persons in the First District, are unsafe, improper and inadequate, and that the additions, repairs and improvements to the rolling stock, equipment, overhead trolley construction and feeder wire system of said company, hereinafter specified, ought reasonably to be made in order to promote the security and convenience of the public, and in order to secure adequate service and facilities in the transportation of passengers.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission, it is

*Ordered*, 1. That said Coney Island and Brooklyn Railroad Company make a thorough inspection of all its open and closed cars, covering car bodies, motor and electric equipment, wiring and trucks; that all defects are to be carefully noted and the cars sent through the various shops for an overhauling which, when complete, will place the cars in a first-class operating and renovated condition; and that when so completed said cars shall thereafter be overhauled at periods which will insure the future up-keep and proper operation of equipment so as properly to serve the public.

The following directions are given, not as detailed working specifications, but merely as illustrative of the intention of the Commission and of the scope and meaning of this order.

#### INSPECTION.

By a thorough inspection and general overhauling of the car bodies and its entire equipment it is intended that each car should be placed over a pit, seats and trapdoors removed and covers taken off to facilitate careful inspection of motors which should be made by a competent superintendent and not by car-house employees.

#### CAR BODY.

Where the car body must be completely repainted as well as revarnished, it should be sent first through the carpenter shop to have all the defects of the wood-work repaired. Special attention should be given to the inspection of all car bodies, covering frame, floor, moulding, stanchions, panels, roofs and hoods, and in every case where the woodwork and other material is not in sound condition, such part should be replaced. All metal work pertaining to car bodies should be renewed if in a defective state, and the various parts of platforms, doors, windows and roofs should be given the same careful renewal.

#### HEAD-LIGHTS.

All cars in service should be supplied with one incandescent head-light, located on each dash of the car. The head-light must be of a type which does not project in front of the dash more than three inches. All head-lights should be overhauled and maintained in a fit condition with new reflectors where necessary, broken glass replaced and new lamps substituted for those below normal candle power.

**WIRING.**

All means possible to improve and perfect wiring, hanging and placing of equipment appliances should be used and a universal system of wiring adopted.

**BRASSES.**

All brasses throughout the cars should be renewed where necessary. Armature and axle shafts and other bearing parts should be normal.

**COMMUTATORS.**

All commutators should be turned where the service is uneven and put in first-class condition, and when abnormally worn should be renewed.

**FIELD COILS AND ARMATURE WINDINGS.**

These should be tested for insulation and if found to be below normal, should be replaced with new ones. They should all be thoroughly cleaned and painted.

**CONTROLLERS.**

Controllers should have all contacts and other parts renewed that show any indication of abnormal wear. Connections should be tightened and the controller thoroughly cleaned and painted.

**AUTOMATIC CIRCUIT BREAKERS.**

These should be tested and maintained operative for the proper load, corresponding to the motor capacity of the car.

**RESISTANCES.**

Resistances should be carefully tested and any section not up to the standard renewed, and a form of insulating hanger used so that the resistance will not be belted directly to the bottom of the car when in line with the splash of the wheel. There should be sufficient space between the resistance and the car floor to prevent danger to the woodwork of the car and also to increase insulation.

**TRUCKS.**

All trucks should be thoroughly cleaned and lined. All broken, weak, sagging, twisted, worn or otherwise defective parts should be replaced with new ones and not merely repaired, except where defects are very slight, especially all springs should be removed where the normal effectiveness has been lost.

**MOTOR SUSPENSION.**

All motor suspension should be completely overhauled, missing parts supplied, springs that have lost their normal effectiveness replaced and all adjustments properly made.

**BRAKES.**

All closed cars in service should be supplied with double chain brakes and the brake mechanisms on all cars should be given careful inspection and improvements made in the mechanism and form at present employed, and the entire brake equipment should be maintained always in first-class operative condition.

**LIGHTNING ARRESTERS AND CUT-OUTS.**

All open cars in service should be equipped with one modern lightning arrester outfit, properly connected and kept always in an operative condition, and all lightning arresters and cut-outs should be given most careful inspection and placed and maintained in first-class operative condition, and such sections of the line of the road which at the present time have insufficient protection should be supplied with lightning arresters.

**AXLE GEAR WHEELS, ARMATURE PINIONS AND CAR WHEELS.**

These should in every instance be renewed where any indication is found of abnormal wear. All gears and pinions should be replaced where the teeth are worn down to less than one sixteenth ( $1/16$ ) of an inch on top, and gear cases should be maintained tight, so as to prevent as much as possible the lubricating grease from being thrown out.

**TIME.**

The company should create facilities and organize a reconstruction department so as to pass each of its open car bodies and equipment through the shops for the overhauling and renewing, as specified above, on or before the 31st day of May, 1908, and all closed car bodies and equipment should receive the same overhauling and renewal process before going into service for the season of 1908-1909.

When any car has been overhauled and prepared for service, as above specified, notice of that fact in writing should be sent to the Commission, stating the time and place where the car is to be tested, to the end that the engineers of the Commission may attend.

**"RUN-IN" BOOK.**

The company should provide a run-in book supplied with a carbon sheet and envelope and this carbon sheet should be mailed to the Equipment and Inspection Bureau of the Commission daily.

**OVERHEAD TROLLEY CONSTRUCTION.**

The entire trolley wire system should be carefully inspected and every part showing excessive wear should be renewed. This refers particularly to the wires on curves, cross-overs and switches, also to the entrance to frogs, switches, section insulators, splicing cars, cross-overs and to points where the trolley joins any of the overhead appliances. All trolley wires should at all times be maintained at a proper tension, so as to prevent excessive sag between supports and should be

## 598 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

maintained at a uniform height above the track, where possible. All span wires, pull-offs and strain wires should be straightened and the slack taken up and all wires must be immediately removed which show corrosion, improper connections or any other imperfection.

### OVERHEAD APPLIANCES.

These should be carefully inspected and where found lacking normal insulation or strength or otherwise defective, should be replaced or repaired, double insulation between all live wires and poles should be made.

### FEEDER WIRES.

The entire feeder wire system should be carefully inspected and all parts showing insufficient insulation or defective construction should be replaced or repaired.

### POLES.

Attention should be given to the cleaning and repainting of substantially all the poles throughout the company's system and particularly to the replacing of deteriorated poles.

*And it is further ordered*, That this order shall take effect immediately and remain in force until modified by the further order of this Commission.

*And it is further ordered*, That on or before the 29th day of June, 1908, the Coney Island and Brooklyn Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

### EXTENSION ORDER No. 779.

October 13, 1908.

An order, No. 596, having been made herein on or about the 23d day of June, 1908, ordering and directing the Coney Island and Brooklyn Railroad Company to thoroughly overhaul, renew and repaint its closed cars before going into service for the season of 1908-1909, and the said Coney Island and Brooklyn Railroad Company having, on October 2, 1908, applied in writing to this Commission for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Coney Island and Brooklyn Railroad Company within which to comply with Order No. 596 with respect to repainting its closed cars and generally overhauling cables and wiring, be, and the same hereby is, extended to and including the first day of January, 1909.

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### Coney Island and Brooklyn Railroad Company.— Overhauling cars.

Commissioner Bassett presented the following report, which was approved and ordered filed:

#### REPORT ON SURFACE CAR CONGESTION ON BROOKLYN BRIDGE.

When the Commission began its duties on July 1, 1907, one of the most aggravating conditions discovered was the slow movement of surface cars on Brooklyn Bridge, especially in the rush hours. Investigations showed the delays to be caused by frequent stoppages due to trouble from motors, fuses, poles and controllers. Another source of delay came from overloaded trucks, which especially in the evening would become stalled on the grade. During the month of September there were 234 delays, amounting to 1060 minutes, or an average delay of 36 minutes. The cars of the Coney Island and Brooklyn Railroad Company were largely responsible for the delays due to failures of equipment. The number and kind of delays charged against this road for September, 1907, were:

Motors . . . . .	49
Fuses . . . . .	65
Poles . . . . .	5
Controllers . . . . .	17
All others . . . . .	11
Total . . . . .	147

The Commission assisted this road in discovering the causes of these numerous delays, issued orders regarding repairs, maintenance and new cars and the result has been quite satisfactory. From time to time the delays decreased, as can be seen by the following schedule showing the number of delays caused by this road on the Brooklyn Bridge each month since that time:

September	October	November	December	January	February	March
147	91	67	49	27	25	15

The time of delays in minutes for the same period is shown to be:

September	October	November	December	January	February	March
621	400	280	203	119	100	54

The delays of the Brooklyn Rapid Transit lines were comparatively low, but they too have been reduced.

At the request of the Commission the bridge department put in force a rule prohibiting the use of the bridge for heavily loaded trucks during the rush hours. Other improvements made by the bridge department have assisted in bringing about the objects desired by the Commission. The result has been that the time of delays has been reduced from 1060 minutes in September to 385 minutes in March. During the month of March 133,000 surface cars crossed the bridge, being an increase of 11,000 over the preceding September, which means that about 396,000 more seats were provided in March than in September. The average number of surface cars passing over the bridge in September in the evening rush hour was 288. In March this average was increased to 310.

At this time one year ago the largest daily number of surface cars that crossed the bridge was approximately 4,000. To-day it is approximately 4,700, an increase of 17½ per cent. At this time a year ago the average number of surface cars crossing the bridge between five and six p. m. was 236. To-day it is 310, an increase of 33 1/3 per cent.

April 20, 1908.

### Coney Island and Brooklyn Railroad Company.—Service on Brooklyn Bridge.

The Secretary presented the following report of Commissioner Bassett regarding delays caused by the cars of the Coney Island and Brooklyn Railroad Company on the Brooklyn Bridge during the months of September, 1907 and September, 1908, which was approved and ordered filed:

#### REPORT OF COMMISSION.

##### COMMISSIONER BASSETT:—

One year ago last month this commission was giving considerable attention to the delays occasioned in the movement of trolley cars on the Brooklyn Bridge. It soon developed that the equipment of the Coney Island & Brooklyn Railroad Company caused the greatest amount of trouble, for the report of that month showing that although the company was operating 16 ¼ per cent. of the total number of cars it caused 62 ¾ per cent. of the total delays. These delays were partly responsible for the great congestion at the bridge. During the month of September, 1907, this railroad had 147 delays, amounting to a total of 621 minutes. September of this year shows 14 delays amounting to a total of 27 minutes. The following is a comparison of the principal causes of trouble during 1907 and the change brought about in one year:

	Sept. 1907.		Sept. 1908.	
	No. of delays.	Minutes.	No. of delays.	Minutes.
Fuses . . . . .	65	256	2	4
Motors . . . . .	49	224	4	7
Controllers . . . . .	17	73	0	0
Poles . . . . .	5	17	3	6
All others . . . . .	11	51	5	10
	<hr/>	<hr/>	<hr/>	<hr/>
	147	621	14	27
	<hr/>	<hr/>	<hr/>	<hr/>

The company is still operating 16 ¼ per cent. of the total number of surface cars across the bridge, but instead of having 62 ¾ per cent. of the number of delays it now has 13 1/3 per cent. These figures show the extent to which the equipment of this road had been allowed to run down, and the result of improvements made under the orders of the Commission in one year.

October 13, 1908.

**Forty-second street, Manhattanville and St. Nicholas Avenue Railway Company.— Unsanitary condition of closed cars on Forty-second street crosstown line.**

Complaint Order No. 447.  
 Heating Order No. 497.  
 Opinion of Commissioner Maltbie.  
 Final Order No. 547.

**COMPLAINT OF M. BURR WRIGHT  
 against**

**FORTY-SECOND STREET, MANHATTANVILLE AND  
 ST. NICHOLAS AVENUE RAILWAY COMPANY  
 AND FREDERICK W. WHITRIDGE, AS RE-  
 CEIVER OF SAID COMPANY.**

Complaint Order No. 447 (see form, note 1) issued May 1st.  
 Hearing Order No. 497 (see form, note 3) issued May 15th.  
 Hearings were held May 22d and 29th.

**OPINION OF COMMISSION.  
 (Adopted June 2, 1908.)**

**COMMISSIONER MALTBIE:**

This case arose from a complaint made by Assemblyman Wright, that the cars operated upon the Forty-second street line were filthy and unsanitary. The complaint was forwarded to the receiver and a reply received, which was not considered satisfactory by the complainant. Accordingly an order for a hearing was adopted by the Commission upon May 15th. A hearing was held upon May 22d and an adjourned hearing upon May 29th.

The evidence presented by the inspectors of the Commission, who were directed to report upon the conditions which existed immediately after the complaint was filed (April 24th), and a few days ago (May 26th), indicated that the complaint was entirely justified. Upon April 24th there was not a single car out of the twenty-three then being operated, which was not dirty or filthy in some respect, and many of them were filthy and unsanitary throughout.

After the complaint was forwarded to the receiver, a marked improvement in the condition of the cars became noticeable, and the receiver stated to the Commission in a communication that he had discharged one of the foremen for neglect of duty.

At the time of the second inspection — May 26 — all of the cars were in better condition than formerly, but some of them were still partially dirty. The inspector who made this investigation testified that it would be possible to put them in a clean and satisfactory condition with little labor and practically no expense. All of the cars are soon to be replaced by open cars and the Commission has already issued an order requiring the Receiver to overhaul and repair all of the cars upon this line. The open cars will, therefore, be in good condition when they are put in use, and the closed cars by early fall.

I have directed, therefore, that an order be prepared directing the receiver to thoroughly clean all of the closed cars which are used during the summer, the other cars having been covered by previous orders.

Thereupon the following final order was issued:

In the Matter of  
**M. BURR WRIGHT, Complainant,**  
*against*

**FORTY-SECOND STREET, MANHATTANVILLE  
 AND ST. NICHOLAS AVENUE RAILWAY COMPANY  
 and FREDERICK W. WHITRIDGE, as  
 receiver of said company,**

**Defendants.**

**FINAL ORDER No. 547.  
 June 2, 1908.**

Unsanitary condition of closed cars on Forty-second  
 Street Crosstown Line.

After Order for Hearing No. 497, dated May 15,  
 1908.

This matter coming on upon the report of the hearing had herein on the 22d day of May, 1908, and on the 29th day of May, 1908, and it appearing that said

hearing was had pursuant to Order for Hearing No. 497 of this Commission, dated May 15, 1908, and returnable May 22, 1908, at 4 P. M., which order for hearing was issued upon the complaint and answer herein; and it appearing that said order for hearing was duly served upon said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company and upon Frederick W. Whitridge as receiver of said company; and it appearing that said hearing was held by and before the Commission on the matters in said complaint, answer and order specified on said 22d day of May, 1908, and the 29th day of May, 1908, before Mr. Commissioner Maltbie, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and M. Burr Wright, complainant, appearing in person and no one appearing for said railway company or for said receiver,

Now, it having been made to appear after the proceedings on said hearing that the regulations, practices, equipment and service of said railway company and said Frederick W. Whitridge, as receiver of said company, in respect to the transportation of persons upon the line of said company known as the Forty-second Street Crosstown Line, within the First District, are unsafe and improper in that the closed cars operated by said company and by said receiver upon said line are in an unclean and unsanitary condition and that the changes in said regulations, practices, equipment and service hereinafter mentioned ought reasonably to be put in force, observed and used by said company and by said receiver on said line and that it would be reasonable to require said changes to be put in force by or before the date hereinafter specified and continued in force as hereinafter provided.

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission, *If it is ordered,* (1) That all closed cars operated by said company and by said receiver on said line shall be placed in a clean and sanitary condition by or before the 8th day of June, 1908, and shall be continued in that condition from that time until the 20th day of September, 1908.

2. That this order shall take effect on the 8th day of June, 1908, and shall continue in force until the 20th day of September, 1908, unless earlier modified or abrogated by the Commission.

3. That said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company and said Frederick W. Whitridge, as receiver of said company, notify the Public Service Commission for the First District within three (3) days after the service of this order upon them whether the terms of this order are accepted and will be obeyed.

### New York City Railway Company.— Overhauling and equipping closed cars.

Hearing Order No. 466.  
Opinion of Commissioner Maltbie.  
Final Order No. 544.

In the Matter  
of the

Hearing on the motion of the Commission on the question of repairs, improvements and additions to equipment and appliances, including rolling stock, of the NEW YORK CITY RAILWAY COMPANY and of ADRIAN H. JOLINE and DOUGLAS ROBINSON, as receivers of said company, in the particulars hereinafter set forth.

HEARING ORDER No. 466.  
May 8, 1908.

Overhauling closed cars, etc.

*It is hereby ordered,* That a hearing be had on the 19th day of May, 1908, at 4 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment and appliances of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of said company, in respect of transportation of persons in the First District, are unsafe, improper and inadequate, and whether improvements, repairs and additions to closed cars and closed car equipments of said company and of said Joline and said Robinson, as receivers of said company, ought reasonably to be made, in order to promote the security and convenience of the public or employees and in order to secure adequate service and facilities for the transportation of passengers and property; and if such be found to be the fact, then to determine whether additions, repairs and improvements therein, as hereinafter set forth, are such as would be just, reasonable, safe, adequate and proper, and ought reasonably be made to promote such security and

convenience to the public or employees and in order to secure adequate service and facilities for the transportation of passengers or property, that is to say:

1. That every closed car of said company or of the said Joline and said Robinson, the receivers of said company, receive a thorough inspection covering car body, motor and electric equipment, wiring and trucks; that all defects therein be carefully noted and the car sent through various shops and there overhauled and repaired so as when completed to be in first class operating and practically new condition. This applies for illustration, but not for specification, to the following:

#### INSPECTION.

By a thorough inspection and general overhauling of the car body and its entire equipment it is intended that the car should be brought to the car house and placed over a pit, seats and trap doors removed and covers taken off, to facilitate close inspection, which is to be made by competent engineers and not by car house employees.

#### CAR BODIES.

The car body must be completely repainted. It should be sent first through the carpenter shop to have all defects of the woodwork repaired as well as the metal work. It should then go to the paint shop to be properly painted.

#### HEADLIGHTS.

All headlights should be overhauled and put in fit condition, with new reflectors where necessary; broken glasses replaced with semaphore glass and the lamps removed when found to be below normal candle power.

#### PILOT FENDERS.

All pilot fenders must be gone over carefully and strengthened and removed whenever, in the judgment of the engineers, it would be beneficial.

#### WIRING, ETC.

All improvements possible in the method of wiring, hanging and placing of equipment appliances should be made.

#### BRASSES.

All brasses throughout the car should be renewed. Armature shaft, axle shaft and other bearing parts should be normal.

#### COMMUTATORS.

Commutators should be turned and made in first class condition, and when abnormally worn must be renewed.

#### FIELD COILS AND ARMATURE WINDINGS.

Should be tested for insulation, and if found to be below standard, must be replaced; otherwise they should be well cleaned and painted.

#### TRUCKS.

Should have all defective and weak parts renewed, not repaired, except in case of very minor defects.

#### BRAKES.

Should be given careful inspection and improvements made in the mechanism and form employed which in the judgment of the company's engineers would be beneficial.

#### CONTROLLERS.

Should have all contact and other parts removed that show any indication of abnormal wear and connections tightened and blown out and painted.

#### AUTOMATIC CIRCUIT BREAKERS.

Should be tested and adjusted for a proper load corresponding to the motor capacity of the car and a form of box covering devised which would be free from the defects that present type of covering has shown.

#### RESISTANCES.

Should be cleaned, tested, and any section not up to the standard removed; a form of hanger used so that the resistance will not be bolted directly to the bottom of the car, and that there is sufficient space between the resistance and the car floor to prevent danger to the woodwork of the car from the resistance becoming abnormally heated, also to increase insulation.

#### AXLE GEAR WHEELS, ARMATURE PINIONS AND CAR WHEELS.

Should in every instance be renewed when an indication is found of abnormal wear and gear cases should at all times be maintained at least half filled with gear grease, so as to minimize the noise as much as possible resulting from the gears and pinions.

#### WIRING.

All power and lighting wiring should be gone over and a careful study made by the company's engineers of means to improve the present methods of wiring employed.

#### TIME.

The work should be organized and carried on in such manner as to cover at the rate of ten cars (10) a day.

2. When any car has been so overhauled and renewed and made ready for service, notice thereof must be sent to the Commission and the inspection of its then condition allowed by inspectors of the Commission before the same is put in service.

And if any such improvements, repairs and additions be found to be such as ought to be made, as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed and in what manner execution of the same should be specified to be made.

All to the end that the Commission may make such order or orders as shall be just and reasonable.

Further ordered, That the said New York City Railway Company and Adrian H. Joline and Douglas Robinson, receivers of said company, be given at least ten days notice of such hearing by service upon each of them, either personally or by mail, of a certified copy of this order, and that at such hearing they be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held May 19th and 27th.

OPINION OF COMMISSION.

(Adopted May 29, 1908.)

COMMISSIONER MALTBIE:—

Several weeks ago the Commission adopted an order directing the receivers of the New York City Railway Company to overhaul and repair all of their open cars by the end of this month. At that time no action was taken relative to the closed cars, as it was considered more necessary that the cars to be used during the summer should be put in first class operating condition prior to the opening of the summer season when the closed cars would go out of use and the open cars come into use. With this work well under way the Commission took up the subject of overhauling and repairing the closed cars. At these hearings evidence was presented which showed that Receivers would be able to begin work upon the closed cars on the 1st of June or shortly thereafter and that six (6) long cars and four (4) short cars could be turned out daily upon an average from and after the middle of June. At the rate of ten (10) a day the receivers will have overhauled and repaired nearly all of the closed cars by the end of the fall. Our engineers have endeavored to work out a plan whereby all of them would be ready for use by the time open cars must be taken out of service, but owing to the lack of shop facilities, due to loss by fire, and to the impossibility of reconstructing the shops in time to operate them to their full capacity upon the whole of this work, it does not seem possible that the receivers will be able to very greatly increase above ten (10), the average number turned out per day. It is possible that some unforeseen circumstance may interfere with the maintenance of this average, but the order as drawn allows a certain amount of leeway and if anything unforeseen should arise, the Receivers may ask for a rehearing and the order can be modified if necessary.

Thereupon the following final order was issued:

FINAL ORDER No. 544.

May 29, 1908.

An order known as Order No. 466 having been made on the 8th day of May, 1908, that a hearing be had to inquire among other things, whether repairs to the closed cars and closed car equipments of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of said company ought reasonably to be made in order to secure adequate service and facilities for the transportation of passengers and property, and said order having been duly served on said New York City Railway Company and on its said receivers, and said hearing having been duly held on the 19th and 27th days of May, 1908, before Hon. Milo R. Maltbie, Commissioner, Mr. Henry H. Whitman, Assistant Counsel to the Commission, attending, and no one appearing for said New York City Railway Company or its said receivers, and the Commission being of the opinion after said hearing that the equipment of said New York City Railway Company or its said receivers in respect of the transportation of persons and property in the First District is unsafe and inadequate, and that the repairs hereinafter set forth ought reasonably to be made in order to secure adequate service and facilities for the transportation of passengers and property, and that the time hereinafter given within which to make such repairs is reasonable,

It is ordered, That the closed cars and closed car equipments of said New York City Railway Company or of said Adrian H. Joline and Douglas Robinson, as receivers of said company, receive a thorough inspection, and that said closed cars and closed car equipments be thoroughly overhauled and repaired so that when completed said closed cars and closed car equipments shall be in a first-class

operating and substantially new condition, having safe, proper and adequate car bodies, headlights, pilot fenders, wiring, brasses, commutators, field coils, armature windings, trucks, brakes, controllers, automatic circuit breakers, resistances, axle gear wheels, armature pinions and car wheels;

*And it is further ordered,* That said New York City Railway Company, and its said receivers, turn out, so overhauled and repaired, on or before the 1st day of July, 1908, not fewer than one hundred of said closed cars and closed car equipments, and that thereafter they turn out, so overhauled and repaired, the remaining closed cars and closed car equipments at the rate of not fewer than one hundred every ten working days until all of said closed cars and closed car equipments shall have been turned out so overhauled and repaired;

*And it is further ordered,* That the New York City Railway Company, or its said receivers, notify the Commission daily in writing, in a form to be prescribed by the Commission, of the number of said closed cars and closed car equipment so turned out as aforesaid, giving the identification numbers thereof, and stating when and where the same are to be tested;

*And it is further ordered,* That the New York City Railway Company, or its said receivers, notify the Commission in writing within five days after the service of this order whether its terms are accepted and will be obeyed.

**New York City Railway Company; Third Avenue Railroad Company; Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company; Dry Dock, East Broadway and Battery Railroad Company.— Overhauling and repair of cars.**

Hearing Order No. 234.  
Opinion of Commissioner Maltbie.  
Final Order No. 260.  
Rehearing Order No. 332.  
Rehearing Order No. 341.  
Opinion of Commissioner Maltbie.  
Final Order No. 365.  
Opinion of Commissioner Maltbie.  
Final Order No. 403.  
Final Order No. 455.  
Opinion of Counsel.  
Extension Order No. 737.

In the Matter  
of the

Hearing on the motion of the Commission, on the question of how the duty imposed under an order of the Commission made December 30, 1907, directing the NEW YORK CITY RAILWAY COMPANY, or ADRIAN H. JOLINE and DOUGLAS ROBINSON, its receivers, on and after February 15, 1908, to turn out not fewer than ten cars daily, not including Sundays and holidays, overhauled and repaired as provided in said order, should be divided between said New York City Railway Company or its said receivers, and the Third Avenue Railroad Company, or Frederick W. Whitridge, its receiver.

ORDER FOR HEARING,  
No. 234.  
January 31, 1908.

An order, being Order No. 179, having been duly made by the Commission on December 30, 1907, in a proceeding entitled, In the matter of the hearing on the motion of the Commission on the question of repairs, improvements and additions to equipment and appliances, including rolling stock, of the New York City Railway Company and of Adrian H. Joline and Douglas Robinson, as receivers of said company, in the particulars in said order set forth, and said Adrian H. Joline and Douglas Robinson as said receivers having thereafter and on the 4th day of January, 1908, notified the Commission in writing that they would use their best

endeavors to obey said order, and thereafter and on or about January 6, 1908, an order having been made by Hon. E. Henry Lacombe, Circuit Judge of the United States, in a suit duly instituted in the United States Circuit Court for the Southern District of New York, by the Central Trust Company of New York against the Third Avenue Railroad Company and others, wherein and whereby one Frederick W. Whitridge was appointed receiver of certain property whereof said Adrian H. Joline and Douglas Robinson had theretofore been the receivers, and the question having arisen as to how the duty imposed under said order of the Commission should be divided between the said New York City Railway Company or its said receivers, and the Third Avenue Railroad Company or its said receiver.

It is hereby ordered, That a hearing be held on the 13th day of February, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire and determine how the duty imposed under said order of the Commission should be divided between said New York City Railway Company or its said receivers, and the Third Avenue Railroad Company or its said receiver;

And it is further ordered, That the New York City Railway Company and its said receivers, and the Third Avenue Railroad Company and its said receiver, be given at least ten days' notice of such hearing, by service upon them, personally or by mail, of certified copies of this order, and that at such hearing they and each of them be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held February 13th.

#### OPINION OF COMMISSION.

(Adopted February 14, 1908.)

##### COMMISSIONER MALTBY:—

Final Order No. 179 required the receivers of the New York City Railway Company to thoroughly overhaul and repair its entire rolling stock and to turn out ready for use at least ten cars per day from and after February 15, 1908, Sundays and legal holidays excepted. This order was adopted December 30, 1907, and was accepted by the receivers under date of January 4, 1908.

After the adoption of the order, the Third avenue system, including the Third avenue line proper, the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company and the Dry Dock, East Broadway and Battery Railroad Company, was placed under a separate receiver by the United States District Court. The question thereupon arose whether the order as originally issued applied not only to the cars now being operated by the receivers of the New York City Railway Company, but also to the cars under the jurisdiction of the receiver for the Third avenue system. As the two systems were being operated independently, it also became necessary to decide how many cars the receivers of each system should overhaul and repair daily.

Accordingly, an order for a hearing was issued and evidence taken upon the 13th of February, 1908. Although the receivers of each system acknowledged the receipt of the notice, no one representing either system appeared at the hearing.

Mr. McLimont of the engineering staff of the Commission was called and gave evidence to the effect that the receivers of the New York City Railway Company were prepared to overhaul and repair ten cars per day from and after February 15, notwithstanding the severance of the Third avenue system from the lines they had originally operated. Mr. McLimont also testified that the receiver of the Third Avenue Company had ample facilities for overhauling and repairing three cars per day from and after March 1, 1908, and also to overhaul and repair all the open car bodies prior to May 1, 1908. In the hearing held prior to the issuance of Order No. 179, Mr. McLimont presented an exhaustive report showing the need for a thorough overhauling of the cars not only of the New York City Railway Company, but also of the Third avenue system, and the receiver has admitted, in correspondence, that the rolling stock was in a dilapidated condition.

I am of the opinion, therefore, that Order No. 179 should stand unchanged and unmodified as respects the New York City Railway Company and its receivers, and that the receiver of the Third Avenue Railroad Company, the said Dry Dock, East Broadway and Battery Railroad Company, and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company should overhaul and repair all

of the open cars prior to May 1, 1908; that he should turn out at least three closed cars per day on and after March 2, 1908, Sundays and legal holidays excepted; that he shall report daily in writing the numbers of the cars repaired, and that from and after March 1, 1908, a transcript of the "run-in" book or books shall be furnished daily to the Commission.

An order is herewith submitted embodying these recommendations.

Thereupon the following order was issued:

**ORDER No. 260.**

February 14, 1908.

This matter coming on upon the report of the hearing duly held herein on the 13th day of February, 1908, pursuant to an order of the Commission made January 31, 1908, which said order was duly served on the New York City Railway Company and on Adrian H. Joline and Douglas Robinson, as receivers of said company on the 1st day of February, 1908, and on the Third Avenue Railroad Company and on Frederick W. Whitridge, as receiver of said company on the 1st day of February, 1908, said Frederick W. Whitridge having been thereafter appointed receiver of the Dry Dock, East Broadway and Battery Railroad Company and of the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, said two last mentioned companies having theretofore been owned or controlled by said Third Avenue Railroad Company, which said service was thereafter duly acknowledged, and said hearing having been held by and before the Commission on the matters embraced and specified in said order, Commissioner Maltbie presiding, Mr. Henry H. Whitman appearing for the Commission, and no one appearing in behalf of the said New York City Railway Company nor in behalf of the said Adrian H. Joline and Douglas Robinson as receivers of said company nor in behalf of the Third Avenue Railroad Company, including said Dry Dock, East Broadway and Battery Railroad Company and said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, nor in behalf of Frederick W. Whitridge, their receiver, and proof having been duly taken upon said hearing, and it appearing therefrom, in the opinion and judgment of the Commission that the order heretofore made by the Commission on December 30, 1907, known as Order No. 179, should stand unchanged and unmodified as respects the New York City Railway Company, and its said receivers, with the same force and effect as if said receivers had continued to be and now were receivers of the property of the Third Avenue Railroad Company, of the Dry Dock, East Broadway and Battery Railroad Company, and of the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company; and it further appearing in the opinion and judgment of the Commission that the equipment and appliances and devices of said Third Avenue Railroad Company, said Dry Dock, East Broadway and Battery Railroad Company and said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company in connection with the transportation of passengers in the city of New York are unsafe, improper and inadequate, and that in order to promote the security and convenience of the public and employees of said company and to secure adequate service and facilities for the transportation of passengers in the city of New York, the repairs hereinafter directed ought reasonably to be made, and that the time hereinafter given within which to make such repairs and improvements is reasonable.

Now on motion of George S. Coleman, Esq., counsel for the Commission, it is

*Ordered*, That the order heretofore made by the Commission on December 30, 1907, known as Order No. 179, shall stand unchanged and unmodified as respects the New York City Railway Company, and its said receivers, with the same force and effect as if said receivers had continued to be and now were receivers of the property of the Third Avenue Railroad Company, of the Dry Dock, East Broadway and Battery Railroad Company and of the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company; and it is further

*Ordered*, That the cars, both open and closed, operated in the city of New York by the said Third Avenue Railroad Company, and said Dry Dock, East Broadway and Battery Railroad Company, and said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or of said Frederick W. Whitridge, their receiver, receive a thorough inspection, covering car bodies, motor and electric equipment, wiring and trucks, and that said cars be thoroughly overhauled and repaired so that when completed they and each of them shall be in first-class operating and substantially new condition, having safe, proper and adequate car bodies, headlights, pilot fenders, wiring, brasses, controllers, automatic circuit breakers, resistances, axle gear wheels, armature pinions and car wheels; and it is further

*Ordered*, That on and after the 2nd day of March, 1908, the said Third Avenue Railroad Company and the Dry Dock, East Broadway and Battery Railroad Company, and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or their said receiver, turn out not fewer than three of said closed cars daily, not including Sundays and legal holidays, so overhauled and repaired, and that in addition the said Third Avenue Railroad Company, the said Dry Dock, East Broadway and Battery Railroad Company, and the said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or their said receiver, have

all of their said open cars so overhauled and repaired on or prior to the 1st day of May, 1908.

*It is further ordered,* That the said Third Avenue Railroad Company, and the said Dry Dock, East Broadway and Battery Railroad Company, and the said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or their said receiver, notify the Commission daily in writing, in a form to be prescribed by the Commission, of the number of said cars so turned out as aforesaid, giving the identification numbers thereof, and stating when and where the same are to be tested.

*It is further ordered,* That from and after the 1st day of March, 1908, the said Third Avenue Railroad Company, the said Dry Dock, East Broadway and Battery Railroad Company, and the said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or their said receiver, furnish and forward daily a transcript of the daily entries in the so-called "run-in" book or books, showing, among other things, which of said cars are out of order.

*It is further ordered,* That said New York City Railway Company, or its said receivers, and the said Third Avenue Railroad Company, the said Dry Dock, East-Broadway and Battery Railroad Company, and the said Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or their said receiver, notify the Commission in writing, within five days after service of this order, whether its terms are accepted and will be obeyed.

Upon application of the company the following rehearing order was issued:

In the Matter  
of the

Hearing on the motion of the Commission on the question whether the order heretofore made by the Commission on February 14, 1908, known as Order No. 260, directing the New York City Railway Company or ADRIAN H. JOLINE and DOUGLAS ROBINSON, its receivers, on and after February 15, 1908, to turn out not fewer than ten cars daily, not including Sundays and holidays, overhauled and repaired, as provided in said order, should be modified in any respect because of the destruction by fire of the car barn at Second avenue and Ninety-sixth street, together with its contents belonging to said company or its receivers.

ORDER FOR HEARING,  
No. 332.  
March 10, 1908.

Whereas a certain order was heretofore made by the Commission on February 14, 1908, known as Order No. 260, directing the New York City Railway Company or Adrian H. Joline and Douglas Robinson, its receivers, on and after February 15, 1908, to turn out not fewer than ten cars daily, not including Sundays and holidays, overhauled and repaired, as provided in said order, and

Whereas said New York City Railway Company or its said receivers thereafter and on February 20, 1908, duly notified the Commission in writing that the terms of said order were accepted and would be obeyed, and

Whereas thereafter on March 2, 1908, the following communication was received by the Commission from said receivers:

"Referring further to our letter to you under date of February 20th, acknowledging whereof by you under date of February 29th, is this day received, we beg to advise you that our car barn at Second avenue and Ninety-sixth street, with its contents, was destroyed by fire yesterday morning. So nearly as we can now estimate, about 340 cars were burned. The second and third floors of this building were practically entirely devoted to the electrical and mechanical work involved in compliance with your Order No. 260, and nearly all of the painting was also carried on at these shops.

"We are compelled to advise you that in view of this catastrophe, it is entirely out of the question for us to continue our compliance with the requirements of Order No. 260, although we shall, of course, do all that is in our power with the resources at our command to rehabilitate our equipment as rapidly as possible. We will advise you from time to time as rehabilitated cars are ready for inspection."

*Now, therefore, it is ordered,* That a hearing be held on the 14th day of March, 1908, at 10:30 o'clock in the forenoon or at any time or times to which the same may be adjourned, at the rooms of the commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether said order No. 260 should be modified in any respect, and it is further

*Ordered,* That the New York City Railway Company or Adrian H. Joline and Douglas Robinson, its receivers, be given at least three days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order,

and that at such hearing they be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held March 24th and April 3d.

Upon application of the companies the following rehearing order was issued:

In the Matter  
of the

Hearing on the Motion of the Commission on the Question of whether the Order heretofore made by the Commission on February 14, 1908, known as Order No. 260, directing the THIRD AVENUE RAILROAD COMPANY, DRY DOCK, EAST BROADWAY & BATTERY RAILROAD COMPANY, and the FORTY-SECOND STREET, MANHATTANVILLE & ST. NICHOLAS AVENUE RAILWAY COMPANY, or FREDERICK W. WHITRIDGE, their receiver, to turn out not fewer than three closed cars daily, not including Sundays and holidays, overhauled and repaired as provided in said order, and also to have all of their open cars so overhauled and repaired on or prior to the 1st day of May, 1908, should be modified in any respect because of lack of materials or facilities.

ORDER FOR REHEARING.  
No. 341.  
March 13, 1908.

Whereas, a certain order was heretofore made by the Commission on February 14, 1908, known as Order No. 260, directing the Third Avenue Railroad Company, the Dry Dock, East Broadway and Battery Railroad Company, and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or Frederick W. Whitridge, their receiver, on and after March 2, 1908, to turn out not fewer than three closed cars daily, not including Sundays and holidays, overhauled and repaired as provided in said order, and also to have all of their open cars so overhauled and repaired on or prior to the 1st day of May, 1908; and

Whereas, said Frederick W. Whitridge, as such receiver, claims that because of lack of materials and facilities he is unable to obey said order or a certain part thereof;

*Now therefore, it is ordered,* That a hearing be held on the 18th day of March, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether said Order No. 260 should be modified in any respect; and it is further

*Ordered,* That the Third Avenue Railroad Company, the Dry Dock, East Broadway and Battery Railroad Company, and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or Frederick W. Whitridge, their receiver, be given at least three days' notice of such hearing by service upon them personally or by mail of a certified copy of this order, and that at such hearing they be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held March 18th and 21st.

OPINION OF COMMISSION.

(Adopted March 24, 1908.)

COMMISSIONER MALTBY:—

Upon February 14th, this year, the Commission adopted an order requiring the Third Avenue Railroad Company, the Dry Dock, East Broadway and Battery Railroad and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or their receiver, to thoroughly inspect, overhaul and repair the cars operated upon these lines prior to May 1, 1908. The order also provided that the companies, or their receiver, should notify the Commission daily in writing, in the form prescribed by the Commission, of the number of cars overhauled and repaired upon that day; and, further, that the companies, or their receiver, should forward daily, from and after the 1st of March, a transcript of the entries in the "run-in" book or books.

Some time after the adoption of the order the receiver notified the Commission that he would be unable to comply with the order so far as the overhauling and repairing of the cars were concerned, within the time provided because of lack of

materials and facilities. Accordingly an order was issued upon March 13th, directing that a hearing be held to consider whether the original order adopted upon February 14th should be modified.

At the hearing held upon March 21st, Mr. Edward A. Maher appeared for the receiver of the three companies affected and testified to the lack of facilities and materials. The evidence given by Mr. Maher and Mr. McWhirter showed that it would probably be possible for the companies or their receiver to overhaul and repair all of the cars to be used during the summer months by the 15th of May, and certainly by the 31st of May; and to overhaul and equip all of their closed cars by the 20th of September. I have, therefore, directed that an order be drawn modifying the original order in these respects.

As to the two other provisions in the original order, relating to daily reports of repaired cars and transcript of the daily entries in the "run-in" books, Mr. Maher testified that he knew of no reason why such notices and transcripts should not be filed as required by the order. I have directed, therefore, that the original order, No. 260, be left to stand as it is.

Thereupon the following final order was issued:

ORDER No. 365.

March 24, 1908.

An order, known as No. 260, having been duly made by the Commission on February 14, 1908, directing, among other things, the Third Avenue Railroad Company, Dry Dock, East Broadway and Battery Railroad Company, and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or Frederick W. Whitridge, their receiver, to turn out not fewer than three closed cars daily, not including Sundays and holidays, overhauled and repaired as provided in said order, and also to have all their open cars so overhauled and repaired on or prior to May 1, 1908, and thereafter a certain order known as Order No. 341, having been made by the Commission on March 13, 1908, directing that a hearing be held on the question of whether said Order No. 260 should be modified in any respect, and said order having been duly served on said Frederick W. Whitridge, as said receiver, on March 14, 1908, and said hearing having been duly had in pursuance thereof, and in pursuance of adjournments on March 21, 1908, Commissioner Maitbie presiding, Mr. Henry H. Whitman appearing as counsel for the Commission, Mr. Edward A. Maher, General Manager for said Frederick W. Whitridge, as said receiver, having attended at said hearing, and it appearing in the opinion and judgment of the Commission that because of lack of materials and facilities said order No. 260 ought reasonably to be modified as hereinafter provided; it is

Ordered, That the Third Avenue Railroad Company, Dry Dock, East Broadway and Battery Railroad Company and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, and Frederick W. Whitridge, their receiver, overhaul and repair, as provided in said order, on or before May 31, 1908, all of their open cars, and also that they overhaul and repair, as provided in said order, on or before May 31, 1908, so many of their closed cars as are required for use during the summer months, and also that they overhaul and repair, as provided in said order, on or before September 20, 1908, all of their remaining closed cars; and it is further

Ordered, That except as hereinbefore expressly modified, said Order No. 260 stand unchanged and unmodified as respects said Third Avenue Railroad Company, Dry Dock, East Broadway and Battery Railroad Company and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, and their said receiver; and it is further

Ordered, That the Third Avenue Railroad Company, Dry Dock, East Broadway and Battery Railroad Company and the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, or their said receiver, notify the Commission in writing within five days after the service of this order whether its terms are accepted and will be obeyed.

OPINION OF COMMISSION.

(Adopted April 7, 1908.)

COMMISSIONER MAITBIE:—

"Mr. Chairman, upon February 14th last the Commission adopted an order directing the New York City Railway Company, or its receivers, to overhaul and repair thoroughly not fewer than ten cars daily, exclusive of Sundays and holidays—this work to proceed until all of the cars had been placed in first class operating condition. Under this order the receivers were proceeding until a fire destroyed the car-barn at Second avenue and Ninety-sixth street, where nearly all of the work was being done. This fire so greatly diminished the facilities of the

company that a hearing was ordered to be held to determine whether the original order should be modified. The evidence taken at these hearings shows that the company is able, under existing conditions, to overhaul and repair all of its open cars, about 370 in number, prior to the 30th of May. The experts of the Commission have not yet been able to determine how rapidly the closed cars can be overhauled, and I have directed that an order be drawn directing the company to overhaul its open cars prior to May 30th, but have left over for subsequent hearings the question of repairing the closed cars. Within two weeks I hope to be able to report upon this matter as well. In the meantime, the receivers have sent 200 of their cars to New Jersey, where they are being repaired by a manufacturing concern."

Thereupon the following final order was issued:

**FINAL ORDER No. 403.**

April 7, 1908.

An order, known as Order No. 332, having been duly made by the Commission on March 10, 1908, directing that a hearing be had on the question whether the order heretofore made by the Commission on February 14, 1908, known as Order No. 260, directing the New York City Railway Company, or Adrian H. Joline and Douglas Robinson, its receivers, on or after February 15, 1908, to turn out not fewer than ten cars daily, not including Sundays and holidays, overhauled and repaired, as provided in said order, should be modified in any respect because of the destruction by fire of the car barn at Second avenue and Ninety-sixth street, together with its contents, belonging to said company or its said receivers, and said order having been duly served on Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company on March 11, 1908, and said hearing having been duly had in pursuance thereof before the Commission on March 24, 1908, and April 3, 1908, Commissioner Maltbie presiding, Mr. Oren Root, General Manager of the New York City Railway Company for its said receivers, attending, and Mr. Henry H. Whitman, Assistant Counsel to the Commission, attending, it is

*Ordered*, That said order heretofore made by the Commission on February 14, 1908, known as Order No. 260, as respects the New York City Railway Company and Adrian H. Joline and Douglas Robinson, its receivers, be modified as hereinafter set forth,

*And it is further ordered*, That all the open cars, being about 370 in number, of said New York City Railway Company, or of its said receivers, prior to the 80th day of May, 1908, receive a thorough inspection, covering car bodies, motor and electric equipment, wiring and trucks, and that said cars be thoroughly overhauled and repaired so that when completed they and every one of them shall be in a first-class operating and substantially new condition, having safe, proper and adequate car bodies, headlights, pilot fenders, wiring, brasses, controllers, automatic circuit breakers, resistances, axle gear wheels, armature pinions and car wheels;

*And it is further ordered*, That said New York City Railway Company, or its said receivers, notify the Commission daily in writing in a form to be prescribed by the Commission, of the number of said open cars so turned out as aforesaid, giving the identification numbers thereof, and when and where the same are to be tested;

*And it is further ordered*, That from and after April 13, 1908, the said New York City Railway Company, or its said receivers, furnish and forward daily to the Commission a transcript of the daily entries in the so-called "run-in" book or books showing, among other things, which of said cars are out of order,

*And it is further ordered*, That this order shall be without prejudice to an order for a hearing and action thereon by the Commission in respect of any of the open cars covered by said Order No. 260 or by Order No. 179 referred to therein;

*And it is further ordered*, That said New York City Railway Company, or its said receivers, notify this Commission in writing within five days after the service of this order whether its terms are accepted and will be obeyed.

**ORDER No. 455, AMENDING FINAL ORDER No. 403.**

May 1, 1908.

An order known as Order No. 403 having been duly made by the Commission on the 7th day of April, 1908, and Adrian H. Joline and Douglas Robinson, receivers of said New York City Railway Company, having thereafter objected to the form of said order upon the ground that by reason of a certain recitation in said order, to wit, "Mr. Oren Root, General Manager of the New York City Railway Company, for its said Receivers attending," the inference might be drawn that said Oren Root appeared on behalf of said receivers, the fact being that he attended at the request of the Commission, it is

*Ordered*, That said Order No. 403 be and the same hereby is amended ~~and~~ <sup>and</sup> pro tanto as of the 7th day of April, 1908, by inserting after the word "attending" in the sixth line of the second page of the said order the words "at the request of the Commission," so that said order as amended shall read as follows, to wit:

## FINAL ORDER No. 403.

An order, known as Order No. 332, having been duly made by the Commission on March 10, 1908, directing that a hearing be had on the question whether the order heretofore made by the Commission on February 14, 1908, known as Order No. 260, directing the New York City Railway Company, or Adrian H. Joline and Douglas Robinson, its receivers, on or after February 15, 1908, to turn out not fewer than ten cars daily, not including Sundays and holidays, overhauled and repaired, as provided in said order, should be modified in any respect because of the destruction by fire of the car barn at Second avenue and Ninety-sixth street, together with its contents, belonging to said company or its said receivers, and said order having been duly served on Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company on March 11, 1908, and said hearing having been duly had in pursuance thereof before the Commission on March 24, 1908, and April 3, 1908, Commissioner Maitbie presiding, Mr. Oren Root, general manager of the New York City Railway Company for its said receivers, attending, at the request of the Commission, and Mr. Henry H. Whitman, Assistant Counsel to the Commission, attending, it is

*Ordered*, That said order heretofore made by the Commission on February 14, 1908, known as Order No. 260, as respects the New York City Railway Company and Adrian H. Joline and Douglas Robinson, its receivers, be modified as hereinafter set forth.

*And it is further ordered*, That all the open cars, being about 370 in number, of said New York City Railway Company, or of its said receivers, prior to the 30th day of May, 1908, receive a thorough inspection, covering car bodies, motor and electric equipment, wiring and trucks, and that said cars be thoroughly overhauled and repaired so that when completed they and every one of them shall be in a first-class operating and substantially new condition, having safe, proper and adequate car bodies, headlights, pilot fenders, wiring, brasses, controllers, automatic circuit breakers, resistances, axle gear wheels, armature pinions and car wheels;

*And it is further ordered*, That said New York City Railway Company, or its said receivers, notify the Commission daily in writing in a form to be prescribed by the Commission, of the number of said open cars so turned out as aforesaid, giving the identification numbers thereof, and when and where the same are to be tested;

*And it is further ordered*, That from and after April 13, 1908, the said New York City Railway Company, or its said receivers, furnish and forward daily to the Commission a transcript of the daily entries in the so-called "run-in" book or books showing, among other things, which of said cars are out of order,

*And it is further ordered*, That this order shall be without prejudice to an order for a hearing and action thereon by the Commission in respect of any of the open cars covered by said Order No. 260 or by Order No. 179 referred to therein;

*And it is further ordered*, That said New York City Railway Company, or its said receivers, notify this Commission in writing within five days after the service of this order whether its terms are accepted and will be obeyed.

## OPINION OF COUNSEL.

July 2, 1908.

*Public Service Commission for the First District:*

SIRS:—I have received the communication of the Secretary, dated June 25, 1908, transmitting a letter from the Electrical Engineer, in which he states that the watchmen at the car barns of the New York City Railway have refused to permit him to enter the buildings for the purpose of examining street cars directed to be repaired by certain orders of the Commission. My opinion is asked as to what are the rights of the Commission in the premises.

Subdivision 3 of Section 66 of Article IV of the Public Service Commissions Law provides that the Commission,

"Shall have access through its members or persons employed and authorized by it to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture or distribution of gas by any such person, corporation or municipality."

The sections of the Act referring to the powers of the Commission in respect to railroads, street railroads and common carriers confers no such specific power upon the Commission. This may perhaps be explained by the fact that Article IV of the Act relating to gas and electrical corporations was substantially a re-enactment of the prior statute relating to that subject (Chap. 737, Laws of 1903).

But Section 45, Subdivision 2, provides that

"Each commission shall have the general supervision of all common carriers, \* \* \* and shall have power to and shall examine the same and keep informed as to their general condition, \* \* \* and the manner in which their lines, owned, leased, controlled or operated, are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements."

Subdivision 3 of that section provides that the Commission,

"Shall have power to examine all books, contracts, records, documents and papers of any person or corporation subject to its supervision."

## 612 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Section 52 provides that,

"The commission shall at all times have access to all accounts, records and memoranda kept by railroad and street railroad corporations \*\*\* and may designate any of its officers or employees who shall thereupon have authority under the order of the commission to inspect and examine any and all accounts, records and memoranda kept by such corporations."

Section 48, Subdivision 1 directs that

"Each commission may, of its own motion, investigate or make inquiry, in a manner to be determined by it, as to any act or thing done or omitted to be done by any common carrier, railroad corporation or street railroad corporation, subject to its supervision, and the commission must make such inquiry in regard to any act or thing done or omitted to be done by any such common carrier, railroad corporation or street railroad corporation in violation of any provision of law or in violation of any order of the commission."

The Commission is thus given express power to enter the offices of street railroad companies for the purpose of inspecting its records, and to delegate that power to its officers or employees.

It is also given the express power to investigate the motive power of street railroad corporations and to make orders in regard thereto (Secs. 50 and 51). Such investigation would necessarily involve inspection of the power plants of street railroad corporations.

Moreover, the act directs that the Commission "must" make inquiry in regard to any act or thing done in violation of any order of the Commission. To ascertain whether the orders in question directing the receivers of the New York City Railway Company to repair its cars within the time and in the manner directed, are being obeyed, it is necessary to inspect the car barns of the company so as to be advised of the progress of the work and such inspection can be made only by an expert. In no other way can the Commission comply with this mandatory provision of the Act.

Section 4 of the Act provides as follows:

"Each commission shall possess the powers and duties hereinafter specified and also all powers necessary or proper to enable it to carry out the purposes of this act."

The evident purpose of this provision was to give the Commission general powers to carry out the purposes of the Act in all cases which could hardly have been enumerated by the Legislature. Under this section, I think, the Commission has ample power to require the New York City Railway Company, or its receivers, to give the Electrical Engineer access at all proper times to the car barns, in order to ascertain whether the terms of the orders made by the Commission requiring repairs are being complied with.

I suggest that the Commission serve upon the receivers of the New York City Railway Company an order for hearing with respect to any violations of the orders of the Commission respecting the overhauling of cars in denying to the Commission's engineers access to car barns or workshops of the receivers, and inspection by them of overhauling work done or being done under said orders, and as to whether the Commission should make its order addressed to the receivers and all officers and employees of the receivers, requiring them and each of them at all times to allow to the Commission and the engineers of the Commission admission to the car barns and workshops of the receivers for inspection of any and all work completed or directed to be done, or then or there being done under the said orders of the Commission. If the receivers of the New York City Railway Company, or any of their officers or employees should disobey the order made after such hearing, the order may be enforced as provided in Sections 56 and 57, Public Service Commissions Law.

Respectfully yours,

(Signed) GEO. S. COLEMAN,  
Counsel to the Commission.

Upon application of the companies the following extension order was issued:

### EXTENSION ORDER No. 737. September 25, 1908.

An order, No. 365, having been made herein on or about the 24th day of March, 1908, ordering and directing the Third Avenue Railroad Company, the Dry Dock, East Broadway & Battery Railroad Company, and the Forty-second Street, Manhattanville & St. Nicholas Avenue Railroad Company, and Frederick W. Whitridge, their receiver, to overhaul and repair, on or before September 20, 1908, all of their closed cars not so overhauled and repaired prior to the date of the adoption of said Order No. 365, and the said Frederick W. Whitridge, receiver of said companies, having on September 23, 1908, applied in writing to this Commission for an extension of such time within which to complete the overhauling and repairs of cars;

Now, on motion made and duly seconded, it is  
Ordered, That the time within which the Third Avenue Railroad Company, Dry  
Dock, East Broadway & Battery Railroad Company, and the Forty-second Street,  
Manhattanville & St. Nicholas Avenue Railroad Company, and Frederick W. Whit-  
ridge, their receiver, shall comply with the terms of Order No. 365 be, and the  
same hereby is, extended to and including the 20th day of October, 1908.

**Pelham Park Railroad Company and City Island Railroad Com-  
pany.— Improvements in and additions to the service and  
equipment.**

Hearing Order No. 428.  
Final Order No. 568.  
Extension Order No. 619.  
Extension Order No. 703.

In the Matter  
of the

Hearing on motion of the Commission on the ques-  
tion of improvements in and additions to the  
service and equipment of the PELHAM PARK  
RAILROAD COMPANY and the CITY ISLAND  
RAILROAD COMPANY.

HEARING ORDER No. 428.  
April 21, 1908.

"Bartow's Station to Belden Point."

It is hereby ordered, That a hearing be had on the 7th day of May, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, and appliances of the Pelham Park Railroad Company and the City Island Railroad Company in respect to transportation of persons and property within the First District between Bartow's Station, on the Harlem River Division of the New York, New Haven, and Hartford Railroad, and Belden Point, on City Island, are unsafe, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public or employees, or in order to secure adequate service and facilities for the transportation of passengers and property, and if such be found to be the fact, then to determine whether a change, addition, and improvement of regulations, equipment, and appliances and service of said Company, as hereinafter set forth, is such as would be just, reasonable, safe, adequate and proper and ought reasonably to be made to promote the security and convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers and property; that is to say:

1. That the said Pelham Park Railroad Company and City Island Railroad Company be directed to overhaul and repair each car owned and operated by them, so that when completed they shall be in first-class condition.
2. That the said railroad companies be directed to provide themselves with a sufficient additional number of cars to enable them to meet the maximum traffic demands upon their Pelham Park to City Island route during the Summer months.
3. That the said railroad companies be directed to resurface their tracks between Bartow's Station and Belden Point above mentioned.

And if any such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered. That the said Pelham Park Railroad Company and the City Island Railroad Company be given at least ten days' notice of such hearing by service upon them, either personally or by mail, of a certified copy of this order, and that at such hearing said companies be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held May 7th, 14th, 28th and June 8th.

The following final order was issued:

FINAL ORDER No. 568.

June 9, 1908.

This matter coming on upon the report of the hearing had herein on May 7, 1908, May 14, 1908, May 28, 1908, and June 8, 1908, and it appearing that said hearing was had pursuant to Order for Hearing No. 428 dated the 21st day of April, 1908, and returnable on the 7th day of May, 1908, and that said order was duly served upon said Pelham Park Railroad Company and said City Island Railroad Company, and that said service was by said companies duly acknowledged, and it appearing that said hearing was had by and before the Commission on the matters in said order specified on the 7th day of May, 1908, the 14th day of May, 1908, the 28th day of May, 1908, and the 8th day of June, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and Alfred A. Gardner, Esq., and A. J. Kenyon, Esq., attorneys, appearing for said railroad companies, and proof having been taken upon said hearing and it having been made to appear after the proceedings on said hearing that the service and equipment of said Pelham Park Railroad Company and said City Island Railroad Company upon the lines of said companies in the City of New York, in respect to the transportation of persons in the First District are unreasonable, improper and inadequate in that the cars operated by said companies upon said lines are badly dilapidated and out of repair and in that the tracks of said companies upon said lines are rough and uneven and out of repair and in need of resurfacing and that repairs, improvements and changes therein and additions thereto in the respects hereinafter mentioned ought reasonably to be made, in order to promote the security and convenience of the public and in order to provide adequate service and facilities for the transportation of passengers upon said lines; and it appearing that it would be reasonable to require that such changes, improvements and additions should be made by or before the first day of July, 1908.

Now, on motion of George S. Coleman, Esq., counsel to the Commission,

It is ordered, 1. That said Pelham Park Railroad Company and said City Island Railroad Company be and they hereby are directed and required either

(a) To thoroughly overhaul, cleanse, renovate and repair all the cars operated by said companies upon their lines between Bartow Station and Belden Point and place the same in a clean, sanitary and safe condition by or before the first day of July, 1908, or

(b) To replace all the cars now operated by them upon said lines with at least an equal number of other cars which shall be thoroughly clean and sanitary and in first-class condition and repair and in every way proper to afford adequate service and facilities upon said lines, by or before the first day of July, 1908.

2. That said Pelham Park Railroad Company and said City Island Railroad Company be and they hereby are directed and required to thoroughly repair and resurface their tracks upon the lines and between the points aforesaid, by or before the first day of July, 1908.

3. That this order shall take effect as hereinbefore provided and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

4. That said Pelham Park Railroad Company and said City Island Railroad Company notify the Public Service Commission for the First District within five days after the service of this order upon them whether the terms of this order are accepted and will be obeyed.

Upon applications of the companies, the following extension orders were issued:

EXTENSION ORDER No. 619.

July 7, 1908.

An order, No. 568, having been made herein on or about the 9th day of June, 1908, ordering and directing the Pelham Park Railroad Company and the City Island Railroad Company either

(a) Thoroughly to overhaul, cleanse, renovate and repair all the cars operated by said companies upon their lines between Bartow Station and Belden Point and place the same in a clean, sanitary and safe condition by or before the 1st day of July, 1908, or

(b) To replace all the cars now operated by them upon said lines with at least an equal number of other cars which shall be thoroughly clean and sanitary and in first-class condition and repair and in every way proper to afford adequate service and facilities upon said lines by or before the first day of July, 1908; and said Pelham Park Railroad Company and the City Island Railroad Company having been further ordered and directed thoroughly to repair and resurface their tracks upon the lines and between the points aforesaid by or before the first day of July, 1908, and the said Pelham Park Railroad Company and the City Island Railroad Company having on June 29, 1908, applied in writing for an extension of time within which to comply with the terms of said order No. 568 before mentioned,

Now, on motion made and duly seconded, it is

Ordered, That the time of the Pelham Park Railroad Company and the City Island Railroad Company within which to comply with the terms of order No. 568 before mentioned be, and the same hereby is, extended to and including the first day of August, 1908.

## EXTENSION ORDER No. 703.

August 28, 1908.

An order, No. 568, having been made herein on or about the 9th day of June, 1908, ordering and directing the Pelham Park Railroad Company and the City Island Railroad Company to improve the rolling stock of their lines between Bartow Station and Belden Point in the manner therein specified on or before the 1st day of July, 1908; and the time within which to comply with said Order No. 568 having been extended to and including the 1st day of August by the terms of Extension Order No. 619 made herein on the 7th day of July, 1908; and the Pelham Park Railroad Company and the City Island Railroad Company having applied in writing on August 27, 1908, for a further extension of such time.

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Pelham Park Railroad Company and the City Island Railroad Company within which to comply with the terms of Order No. 568 before mentioned be, and the same hereby is, extended to and including the 15th day of September, 1908.

**Union Railway Company.—Overhauling and repairing of cars.**

Hearing Order No. 222.  
Final Order No. 338.  
Extension Order No. 740.

In the Matter  
of the

Hearing on the motion of the Commission on the question of repairs, improvements and additions to equipment and appliances, including rolling stock of the UNION RAILWAY COMPANY, in the particulars hereinafter set forth.

Overhauling cars, etc.

ORDER FOR HEARING  
No. 222.  
January 28, 1908.

*It is hereby ordered*, That a hearing be held on the 10th day of February, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment and appliances of the Union Railway Company in respect of transportation of persons in the First District are unsafe, improper and inadequate, and whether improvements, repairs and additions to cars and car equipment of said company ought reasonably to be made in order to promote the security and convenience of the public or employees, and in order to secure adequate service and facilities for the transportation of passengers and property, and if such is found to be the fact, then to determine whether additions, repairs and improvements therein, as hereinafter set forth, are such as would be just, reasonable, safe, adequate and proper, and ought reasonably to be made to promote such security and convenience of the public, or employees, and in order to secure adequate service and facilities for the transportation of passengers and property, that is to say:

1. That every car of said company receive a thorough inspection covering car body, motor and electric equipment, wiring and trucks; that all defects therein be carefully noted and the car sent through various shops and there overhauled and repaired so as, when completed, to be in first-class operating and practically new condition. This applies for illustration, but not for specification, to the following:

**INSPECTION.**

By a thorough inspection and general overhauling of the car body and its entire equipment, it is intended that each car should be brought into the car house and placed over a pit; seats and trap doors removed and covers taken off to facilitate careful inspection, which should be made by competent engineers, and not by car house employees.

**CAR BODIES.**

Where the car body must be completely repainted, it should be sent first through the carpenter shop to have all defects of the woodwork repaired. It should then go to the paint shop to be properly painted.

Special care should be given to the inspection of all car bodies covering framing, flooring, moulding and panels, and in every case where the wood is not in sound condition such part is to be replaced, strengthened and made practically new; also, all metal work pertaining to the car body must be renewed if in a defective state, and the floors and parts of platforms, doors, windows, and roofs must be given the same careful inspection and renewal.

On account of the especially bad condition of the car steps which were found to be loose, bent and worn so that in many cases they are unsafe, special attention should be given to the renewal of car steps to put them in a fit condition.

**HEADLIGHTS.**

All headlights should be overhauled and put in a fit condition with new reflectors where necessary; broken glasses replaced with semaphore glass and lamps removed when known to be below normal candle power.

**PILOT BOARDS.**

All pilot boards should be gone over carefully and renewed wherever the present board is found to be defective.

**WIRING.**

The wiring upon the cars of this road has been found to be badly defective inasmuch that insulation is impaired and the opportunities for defects occurring which would make the service of the car unreliable and possibly unsafe, so that all improvements possible in the present method of wiring, hanging and placing of equipment appliances should be made a careful study, and a universal system of wiring adopted. THIS IS ONE OF THE MOST IMPORTANT MATTERS PERTAINING TO THE ENTIRE CAR EQUIPMENT.

**BRASSES.**

All brasses throughout the car should be renewed, armature and axle shafts and other bearing parts should be normal.

**COMMUTATORS.**

Should be turned and made in first-class condition, and when abnormally worn must be renewed.

**FIELD COILS AND ARMATURE WINDINGS.**

Should be tested for insulation and if found to be below normal should be replaced with new ones, otherwise they should be well cleaned and painted.

**TRUCKS.**

All trucks must be thoroughly cleaned and lined; all broken, weak or otherwise defective parts must be replaced with new ones, not repaired except in very minor defects, and that especially all springs must be renewed where their normal effectiveness has been lost.

**BRAKES.**

Should be given careful inspection and improvements made in the mechanism and form at present employed, which, in the judgment of the company's engineers, will be beneficial.

**CONTROLLERS.**

Should have all contact and other parts renewed that show indication of abnormal wear; connections tightened and the controller thoroughly cleaned and painted.

**AUTOMATIC CIRCUIT BREAKERS.**

Should be tested and maintained operative for the proper load corresponding to the motor capacity of the car. Especial care should be given to this matter.

**RESISTANCES.**

Should be cleaned, tested and any section not up to the standard, renewed, and a form of hanger used so that the resistance will not be bolted directly to the bottom of the car, and that there is sufficient space between the resistance and the car floor to prevent danger to the woodwork of the car from the resistance becoming abnormally heated, and, also, to increase insulation as it has been found that the present form of hanging the resistance has been the cause of passengers getting an electric shock. This matter should be given immediate and careful attention.

**AXLE GEAR WHEELS, ARMATURE PINIONS AND CAR WHEELS.**

Should in every instance be renewed when the indication is found of abnormal wear. All gears and pinions must be replaced where the teeth are worn down to less than 1/16 of an inch on top, and the lower half of each gear case should at all times be maintained not less than half full of gear grease so as to minimize the noise as much as possible resulting from the gears and pinions.

**CAR LIGHTS AND WIRING.**

It has been noted that the car lighting appliances are not maintained in a clean and well-kept manner, and, also that the light wiring in many cases has defective insulation. Loosely made connections, the wiring exposed in the car subject to improper handling, goes to make the lighting service unreliable, and it is recommended that all our lighting appliances and wiring should be overhauled and such part as may be necessary should be renewed.

**TIME.**

Facilities should be created and a reconstruction department organized to carry on the above work in such a manner as to cover at the rate of four (4) cars per day.

2. When any car has been overhauled and prepared for service, as above provided, notice thereof be sent to the Commission and the inspection of its then condition allowed by inspectors of the Commission before the same is put into service.

And if any such improvements, repairs and additions be found to be such as ought to be made, as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed and in what manner execution of the same should be specified to be made.

All to the end that the Commission may make such order or orders as shall be just and reasonable. And it is

Further ordered, That the Union Railway Company be given at least ten days notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing it is afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held February 10th, 19th and March 10th.

The following final order was issued:

ORDER No. 336.

March 13, 1908.

An order, known as Order No. 222, having been made by the Commission on the 28th day of January, 1908, directing that a hearing be held to inquire whether the equipment, appliances and devices of the Union Railway Company, in respect to transportation of persons or property in the First District, are unsafe, improper or inadequate, and whether repairs, improvements, changes and additions ought reasonably to be made in order to promote the security and convenience of the public and the employees of said company, and to secure adequate service or facilities for the transportation of persons or property, and if so, whether the repairs, improvements, changes or additions as in said order set forth are such as would be reasonable, safe, adequate and proper, and ought reasonably to be made to promote such security and convenience of the public and said employees, and to secure adequate service and facilities for the transportation of passengers or property, and said order having been duly served on the Union Railway Company on the 29th day of January, 1908, and said service having been duly acknowledged by said Company, and said hearing having been duly had in pursuance thereof before the Commission on the 10th day of February, 1908, the 19th day of February, 1908, and the 10th day of March, 1908, Commissioner Eustis presiding, Mr. Henry H. Whitman appearing as counsel for the Commission, and Mr. George W. Davidson appearing as counsel for the Union Railway Company, and it appearing in the opinion and judgment of the Commission that the equipment, appliances and devices of the Union Railway Company, in respect of the transportation of persons or property in the city of New York, are unsafe, improper and inadequate, and that the repairs, improvements, changes and additions hereinafter directed ought reasonably to be made in order to promote the security and convenience of the public and the employees of said company, and to secure adequate service and facilities for the transportation of persons or property, and that the time hereinafter given within which to make such repairs, improvements, changes and additions is reasonable.

It is ordered, That the cars of the said Union Railway Company receive a thorough inspection covering car bodies, motor and electric equipment, wiring and trucks, and that said cars be thoroughly overhauled and repaired, substantially as outlined in said Order No. 222, as thereafter amended, so that when completed their condition shall be substantially new, having safe, proper and adequate car bodies, car seats, wheel guards, headlights, pilot boards, wiring, brasses, commutators, field coils, armature windings, trucks, brakes, controllers, automatic circuit breakers, resistances, axle gear wheels, armature pinions, car wheels, car lights, car winding and lightning arresters; and it is further

Ordered, That the appliances and devices of said company be repaired, improved or changed, substantially as outlined in said Order No. 222, as thereafter amended, so that the same when completed shall be substantially new, having safe, proper and adequate drawbridge connections, including drawbridge track frogs, overhead trolley wires, span wires, pull-off and strain wires, pole brackets, feeder wires, lightning arresters, poles, troughs and other overhead appliances; and it is further

Ordered, That all of the open cars of said company be so repaired as aforesaid on or before the 31st day of May, 1908, and that all the closed cars of said Company be so repaired as aforesaid on or before the 20th day of September, 1908, and that said repairs, changes, improvements and additions to said other appliances and devices of said company be completed on or before the 31st day of May, 1908; and it is further

Ordered, That the said Union Railway Company notify the Commission weekly in writing, in a form to be prescribed by the Commission, of the number of said cars so repaired as aforesaid, giving identification numbers thereof, and when and where the same can be inspected; and it is further

Ordered, That from and after the 23rd day of March, 1908, said Union Railway Company forward daily to the Commission a transcript of the daily entries in its so-called "run in" book or books, showing among other things which of said cars have been out of order, and in what respect; and it is further

Ordered, That said Union Railway Company notify this Commission in writing within five days after service of this order whether its terms are accepted and will be obeyed.

Upon application of the company, the following extension order was issued:

EXTENSION ORDER No. 740.

September 25, 1908.

An order, No. 336, having been made herein on or about the 13th day of March, 1908, ordering and directing the Union Railway Company, on or before the 20th day of September, 1908, to repair all the closed cars of said company as provided in said order, and the receiver of said Union Railway Company having on September 28, 1908, applied in writing for an extension of time within which to overhaul and repair the closed cars above mentioned.

Now, on motion made and duly seconded, it is  
*Ordered*, That the time within which the Union Railway Company shall comply with the terms of Order No. 336 above mentioned, in respect to the repairing of closed cars be, and the same hereby is, extended to and including the 20th day of October, 1908.

**Assembly Bills relating to the Equipment and Operation of Railroads and Street Railroads considered.**

\*[Changes in appliances, equipment and facilities of railroad companies should be made by the Commission rather than by act of the Legislature.]

The chairman of the Commission sent the following letter to the chairman of the Assembly Committee on Railroads with regard to certain bills:

**LETTER OF CHAIRMAN WILLIAM R. WILLCOX.**

March 16, 1908.

*Hon. J. M. WAINWRIGHT, Chairman Committee on Railroads, Assembly Chamber, Albany, N. Y.:*

DEAR SIR.—Pursuant to your request of March 5, 1908, we have carefully considered Assembly Bills Nos. 17, 21, 22, 24, 25, 221 and 395, which you submitted to the Commission.

Int. No. 17 Assembly, Mr. Glück, requires that all cars or trains in the city of New York should operate at intervals of not more than fifteen minutes during the twenty-four hours of each day. No rule such as this can with fairness be applied to the different lines in this city. Some suburban lines may properly be operated at longer intervals than the lines in crowded localities. As a different headway rule should apply to different lines by reason of locality and amount of patronage, it would seem proper that this subject should not be made the subject of legislation.

Int. No. 24 Assembly, Mr. Gillick, provides that a guard on the rear platform of all street railroad cars within the counties of Kings and New York be maintained during the rush hours. This requirement would mean that each street car in these two counties during the rush hours should be manned by three employees instead of two, as is now the case. The bill fixes 6:00 A. M. to 9:00 A. M. as the morning rush period and 5:00 P. M. to 8:00 P. M. as the evening rush period. Our investigations have shown that different parts of the city have different rush hours. For instance, the morning rush hour in some localities will occur between 5:00 and 6:00, and in the same locality there will be little travel between 8:00 and 9:00. In some other locality there may be practically no travel between 5:00 and 6:00 A. M., but the rush hour occurs between 8:00 and 9:00 A. M. The provision of this bill would require an unnecessary car crew in many parts of the city both morning and evening. It would seem to the Commission that a general rule on this subject would be improper and oppressive. It may be found that on certain congested lines, such as the Manhattan crosstown lines, some method like that outlined in this bill will be proper. The cars known as pay-as-you-enter cars have been introduced in Buffalo and are about to be introduced in Manhattan. These cars are a rational compliance with the demand expressed by this bill. If they prove successful and gradually take the place of the present form of car the object sought to be attained by this bill will be reached without legislation.

Int. No. 21 Assembly, Mr. Glück, provides for guard rails on elevated railroad stations in the borough of Brooklyn to keep passengers from falling off the platform to the track. The observations of the Commission since its inception point to the undesirability of such a step. The accident schedules of the Commission do not show that the lack of guard fences is a cause of accidents. Train movement would be made slower by reason of slow stops to adjust gates to the openings in the fence. There are special instances where such guard fences are desirable and they should be treated by orders of the Commission as the occasions arise. If the Legislature should consider that guard rails are necessary on all elevated platforms the law should be general and apply to the whole state. The proper function of the Com-

\* See footnote, page 9.

mission in that case would be to have a hearing, if requested so to do by the Legislature, and report either facts or opinions to the Legislature for its assistance in framing such a statute.

Int. No. 22 Assembly, Mr. Glück, requires every railroad passenger car to carry a medical and surgical chest containing bandages, etc. We infer that it relates to steam railroads and not to street railroads. As the requirement if deemed wise would plainly apply to all cars of a certain class within the state it would seem proper to the Commission that it should be made the subject of a general law. The function of the Commission in this regard would be to report to the Legislature on the practicability of keeping medicine and medical appliances constantly on hand in such chests and a tabulation of actual accidents where such appliances close at hand would have been helpful. This for the purpose of assisting the Legislature in framing proper legislation.

Int. No. 25 Assembly, Mr. Glück, requires toilet rooms containing water closets in every railroad station in the borough of Brooklyn. The need of toilet rooms varies according to the location and use of elevated stations. Stations at junctions where passengers transfer and in the downtown localities, especially in the shopping districts, should have toilets. Many stations in residential districts where there is substantially no waiting, excepting by people who have just left their homes, have no need of toilets, and it might be claimed that they were more of a drawback in such localities than they were a benefit. It would seem proper that this subject should be left to the Commission to investigate the needs of each station upon complaint made.

Int. No. 218 Assembly, Mr. Glück, provides for two motormen on every elevated or subway passenger car in Brooklyn, Manhattan or the Bronx. The Commission is collecting material on this subject and preserving tabulations of all accidents that occur by reason of one motorman instead of two. This subject has been studied in connection with the operation of trains in the subway and is related to the use of block signals and automatic stop devices. It is already apparent that some roads not having automatic stop devices attached to the track might more properly require two motormen than roads that had such devices. It is claimed that on the subway and all elevated lines, if the motorman should be strucken while on duty the lever would automatically swing back and stop the train. If, in addition to this precaution, a track automatic stop is used in connection with the block signal system, there would be no need of two men in the box. In other words, two men may prove to be needed on some roads and not needed on others. Our opinion is that this subject can properly be left to the Commission.

Yours very truly,  
(Signed) WM. R. WILLCOX,  
*Chairman.*

## REPAIR OF TRACKS, SWITCHES AND CROSS-OVERS.

**Brooklyn Heights Railroad Company.**—Defective tracks and switches on Main street near Fulton and Prospect streets.

COMPLAINT OF ROBERT E. ANTHONY

*against*

BROOKLYN HEIGHTS RAILROAD COMPANY.

Complaint Order No. 220 (see form, note 1), issued January 28th.

The company answered February 6th stating that the tracks and switches in question were not in need of renewal.

**Brooklyn Heights Railroad Company.—Cross-over switches on the Nostrand avenue line at Church avenue.**

Hearing Order No. 326.  
Opinion of Commissioner Bassett.  
Final Order No. 376.

In the Matter  
of the

Hearing upon motion of the Commission on the question of changes in the regulations, practices and service of the BROOKLYN HEIGHTS RAILROAD COMPANY.

"Cross-over switches on the Nostrand Avenue Line at Church Avenue."

HEARING ORDER No. 326.  
March 10, 1908.

It is hereby ordered, That a hearing be had on the 23d day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Brooklyn Heights Railroad Company, in respect to transportation of persons in the State of New York, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement, in regulations, practices, equipment, appliances and service of the said company, as hereinafter set forth, are such as may be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

1. That the cars at present operated on the Nostrand avenue line be run through to the southerly terminus of said line at Vanderveer Park, instead of some of them being turned back at Church avenue.

2. That the cross-over switch located at Nostrand and Church avenues on the Nostrand avenue line be removed.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said Brooklyn Heights Railroad Company be given at least ten (10) days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held March 23d.

OPINION OF COMMISSION.

(Adopted March 27, 1908.)

COMMISSIONER BASSETT:—

This matter was brought to the attention of the Commission by the complaints of the Flatbush Taxpayers' Association and others. Their grievance is that the railroad company switches back cars at Church avenue which should run through to Vanderveer Park. As a means of putting an end to this abuse, the complainants ask that the company be ordered to remove the cross-over switch at Church avenue.

After hearing the testimony of the complainants and of the railroad company, I believe that there is cause for complaint, but I do not believe that the proper method of correcting the existing abuses is to order the switch torn up. This cross-over or switch has its proper uses, and I believe that in this case and in all similar cases the Commission should refuse to order removal of cross-overs as a means of correcting the abuse of switching cars back unnecessarily.

From the company's testimony in this hearing it would appear that a two and one-half minute headway is maintained in rush hours under normal conditions of travel. This I believe to be sufficient, and in order to prevent unnecessary switching back of cars I present herewith an order limiting the cars switched back to those which are crippled and to the switching back of one, and that the last one, of a number of cars that have become bunched. The practice has been to switch

back the first car, and this almost invariably is the heaviest loaded. By specifying the last car I have, I believe, selected the one carrying the smallest number of passengers.

I believe that the adoption of this order will remedy the evil complained of, especially as the testimony of the complainants shows that since the service of the order for hearing conditions have been materially bettered.

Thereupon the following final order was issued:

**FINAL ORDER NO. 376.**

March 27, 1908.

This matter coming on upon the report of the hearing had herein on the 23rd day of March, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission, No. 326, made March 10, 1908, and returnable on the 23rd day of March, 1908, and that the said order was duly served upon the Brooklyn Heights Railroad Company and that the said service was by it duly acknowledged and that the said hearing was held by and before the Commission on the matters in said order specified on March 23, 1908, before Mr. Commissioner Bassett presiding, Arthur DuBois, Esq., appearing for the Commission and Arthur N. Dutton, Esq., appearing for the Brooklyn Heights Railroad Company, at which hearing proof was taken.

hearing proof was taken,  
Now, it being made to appear, after the proceedings upon said hearing, that the regulations, practices and service of the Brooklyn Heights Railroad Company, in respect to the transportation of persons in the First District on its Nostrand avenue line, between Church avenue and Vanderveer Park, has been and is unreasonable, improper and inadequate, and it being the judgment of the Commission that the said railroad company does not run cars enough reasonably to accommodate the passenger traffic transported by or offered for transportation to it, on its Nostrand avenue line, between Church avenue and Vanderveer Park, and that the said railroad company does not run its cars with sufficient frequency between the said points on its Nostrand avenue line.

Now, therefore, on motion of George S. Coleman, counsel to the Commission,

*It is ordered* That with the exception of such cars as may be disabled or in need of immediate repair, or such car as may be the last of a group of three or more cars arriving at the Church avenue cross-over at one time, no southbound car on the Nostrand avenue line shall be switched back at Church Avenue.

That in no event shall the first car of a group of three or more cars arriving at Church avenue at one time be switched back unless disabled or in need of immediate repair, nor shall any car be so switched back unless a car or cars ahead are held for the purpose of providing sufficient accommodation to carry the passengers transferring from the car switched back at Church avenue.

*and* it is further ordered, That this order shall take effect at once and continue in force for a period of two years from and after taking effect of the same, but without prejudice for an order for further or additional hearing and action thereon by the Commission in respect of anything herein prescribed or in respect of anything covered by the order for hearing herein, prior to the expiration of said period of two years.

*And it is further ordered*, That before April 3, 1908, said Brooklyn Heights Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

**Brooklyn Heights Railroad Company.**—Defective condition tracks on Tompkins avenue between Broadway and Division avenue.

**COMPLAINT OF A. J. O'NEILL  
against**

Case No. 1026.

## BROOKLYN HEIGHTS RAILROAD COMPANY.

Complaint Order (see form, note 1) issued December 31st.

**Coney Island and Brooklyn Railroad Company.**—Defective switches and tracks at Main and Prospect streets and at Main and Fulton streets.

ROBERT E. ANTHONY, *Complainant,*  
*against*  
AND & BROOKLYN RAILROAD COMPANY, *Defendant,*

**ORDER OF DISMISSAL**  
No. 219.  
January 28, 1908.

An order, No. 143, having been made herein on December 9, 1907, by which the Coney Island and Brooklyn Railroad Company was required to make answer to the

complaint herein within ten days from the service upon it of said order, and an answer having been received from said company on December 21, 1907, by which it appears that said Company is not the owner of the frogs, switches and curves mentioned in said complaint,

*Ordered*, That the said complaint be and the same hereby is dismissed and that this order be filed in the office of the Commission.

**Coney Island and Brooklyn Railroad Company.**—Repair of tracks, frogs and switches.

**Hearing Order No. 192.  
Final Order No. 309.**

ROBERT E. ANTHONY,  
*Complainant,*  
*against*  
CONEY ISLAND AND BROOKLYN RAILROAD  
COMPANY,  
*Defendant.*

- ORDER FOR HEARING BY  
COMMISSIONER BASSETT.  
ORDER No. 192.  
January 6, 1908.

Upon the complaint herein and answer of the Coney Island and Brooklyn Railroad Company, under Order No. 131,

**Ordered.** That upon the matters therein a hearing be had on the 20th day of January, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at Number 154 Nassau street, borough of Manhattan, city and State of New York.

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Robert E. Anthony, of No. 353 East Seventeenth street, borough of Brooklyn, city and State of New York, and said Coney Island and Brooklyn Railroad Company, be given at least ten days' notice of such hearing, by service upon each of them, either personally or by mail, of a certified copy of this order, and that at such hearing they be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

(Signed) E. M. BASSETT,  
*Commissioner.*

Ordered, this 6th day of January, 1908, that the foregoing order be and the same hereby is approved and confirmed by the Public Service Commission for the First District, and ordered filed in its office.

Hearings were held January 20th, 29th and February 5th.

The following final order was issued:

**ORDER No. 309.**

**March 3, 1908.**

This matter coming on upon the complaint of Robert E. Anthony, bearing date the 30th day of November, 1907, and the answer thereto of Coney Island & Brooklyn Railroad Company, bearing date the 13th day of December, 1907, and the report of the hearing had herein on the 20th day of January, 1908, and the adjournments thereof; and it appearing that said hearing was held by and pursuant to an order of the Commission, being Order No. 192, made and entered the 6th day of January, 1908, and returnable on said 20th day of January, 1908, and that said order for hearing was duly served upon the said Coney Island & Brooklyn Railroad Company and that said hearing was held by and before said Commission on the matters in said complaint, said answer and said order specified, on the 20th day of January, 1908, and by adjournment duly had on the 29th day of January, 1908, and by adjournment duly had on the 5th day of February, 1908, Mr. Commissioner Bassett presiding at each of said sessions, and Grosvenor H. Backus, Esq., Assistant Counsel, appearing for the Commission, and John J. Kuhn, Esq., and A. B. Britton, Esq., of counsel for said company, appearing for said company and evidence being taken.

or counsel for said company, appearing for said company, and evidence being taken, Now, it being made to appear after the proceedings on said hearing that the regulations, practices, equipment, appliances and service of said company, in respect to the transportation of persons within the First District, are unreasonable, unsafe, improper and inadequate, and it appearing that the changes in regulations, practices, equipment, appliances and service, as are hereinafter specified, would be just, reasonable and proper and ought reasonably to be put in force, observed and used in the transportation of persons, and it appearing that the repairs, improvements and changes hereinafter specified in the motive power and other property and devices

used by said Coney Island & Brooklyn Railroad Company, in connection with the transportation of passengers, ought reasonably to be made, and that additions should reasonably be made thereto in the manner hereinafter specified in order to promote the security and convenience of the public, and in order to secure adequate service or facilities for the transportation of passengers, and that said repairs, improvements, changes and additions ought reasonably to be made within the times hereinafter specified;

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered:*

1. That said Coney Island & Brooklyn Railroad Company immediately tighten up the straight rail at the big end of the switch at Washington and Prospect streets.

2. That said company immediately replace the two loose centers in the east track northbound at Sands and Jay streets, and tighten up the joint plates.

3. That said company put in good and proper repair the branch-off from Washington street at High and Washington streets, including the curve to return cars east on Washington street.

4. That said company tighten up and put in good repair the loose joints in the crossing at Washington and Prospect streets.

5. That said company tighten up the joints where the turnout from the eastbound track meets the main line on Washington street between Nassau street and High street, and that said company tamp up the ties and otherwise put said turnout in good and proper repair.

6. That said company tighten up the joints at the end connection of the special work in the main track at Sands and Jay streets, and tighten up the loose joints in the special work and tighten and tamp up the loose ties in said special work.

*Further ordered,* That the work on the repairs required by the foregoing paragraphs numbered 3, 4, 5 and 6 be commenced as soon as the frost is out of the ground, and be completed as soon as possible and without unnecessary delay.

*And it is further ordered,* That this order shall take effect immediately, and shall remain in force until modified by the further order of this Commission.

*And it is further ordered,* That within five days, the said Coney Island & Brooklyn Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

## Metropolitan Street Railway Company.—Inadequate service and equipment on Fourth and Madison avenue line.

In the Matter  
of the

Hearing on the motion of the Commission on the question of the adequacy of the service and equipment of the METROPOLITAN STREET RAILWAY COMPANY in respect to the present service on the Madison and Fourth Avenue Line.

REHEARING ORDER No. 836.  
November 16, 1908.

An order, No. 52, having been made and filed herein on October 28, 1907, under and pursuant to an order for a hearing No. 10 made August 29, 1907, directing the New York City Railway Company to increase its service on the Madison and Fourth Avenue Line, and said Order No. 52 having been duly served upon the New York City Railway Company and said company having then notified the Commission that Adrian H. Joline and Douglas Robinson had been appointed receivers thereof, and said receivers having accepted said Order No. 52 on October 30, 1907, and the property leased by said company having been turned over to the Metropolitan Street Railway Company, and Adrian H. Joline and Douglas Robinson having been appointed receivers of that company, and said receivers having subsequently, on November 11, 1908, applied in writing to this Commission for a rehearing in respect to the matter contained in said Order No. 52, and sufficient reason for said rehearing having been made to appear, it is

*Ordered,* That said request for a rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 52, entered and filed on October 28, 1907, be held on the 20th day of November, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of Order No. 52, whether Order No. 52 or any part thereof is unjust or unwise, and whether the said Order No. 52 should be changed, modified, or abrogated.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said receivers of the Metropolitan Street Railway Company be given at least two days' notice of such rehearing, by service upon them, either personally or by mail, of a certified copy of this order, and that at such rehearing said receivers shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

The purpose of the receivers in making application for the above rehearing order was to secure such modification of Order No. 52 as would enable them to expedite the work of renewing the rails between Forty-second and Eighty-sixth streets. On November 19th, the receivers informed the Commission that the police department stated that it could not grant them permission to carry on the work of rail renewal on Madison avenue, and that under the circumstances, nothing could be gained by a rehearing at the present time.

**Nassau Electric Railroad Company.— Repairing of track on Bergen street — Service on Bergen street line and St. Johns Place line.**

In the Matter  
of the

Hearing upon motion of the Commission on the question of improvements in and additions to the service and equipment of the NASSAU ELECTRIC RAILROAD COMPANY in the particulars hereinbelow mentioned.

HEARING ORDER No. 331.  
March 10, 1908.

"Repairing of track on Bergen street—Service on Bergen Street line and St. Johns Place line."

*It is hereby ordered*, That a hearing be had on the 25th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Nassau Electric Railroad Company, in respect to transportation of persons in the State of New York, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances, and service of said company, as hereinafter set forth, are such as may be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to them and to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, that is to say:

1. Whether the following repairs of track should be made:  
A. That the said Nassau Electric Railroad Company replace the broken inner rail of the eastbound track on Bergen street about 150 feet west of Revere Place.  
B. That said company replace the broken inner rail of the westbound track on Bergen street about 50 feet east of Revere Place.
2. Whether the service of said Nassau Electric Railroad Company should be increased or supplemented at the points and times and in the particulars following:

**A. BERGEN STREET SURFACE LINE.**

*Westbound*, Woodhaven (Grant avenue) to New York.

1. Leaving Woodhaven to New York between 6:30 and 8 A. M. by an increase of five (5) cars or by an increase from sixteen to twenty-one (16 to 21), making a total service from 6 to 8 A. M. of the twenty-seven (27) cars.
2. Leaving Albany Avenue depot to New York between 6 and 7 A. M. by an increase of two (2) cars or by an increase of from five to seven (5 to 7) cars, making the total service between 6 and 8:30 A. M. twenty (20) cars.
3. Leaving Rockaway avenue to Borough Hall between 6:45 and 8:15 A. M. by the operation of a new service of fifteen (15) cars from Borough Hall over the following route:

**From Rockaway avenue over the regular route of the Bergen street line to Boerum place and Atlantic avenue, through Atlantic avenue to Court street, through Court street to Joralemon street, through Joralemon street to Fulton street, through Fulton street to Boerum place, and thence by the regular route returning to Rockaway avenue.**

***Eastbound, New York to Depot and Woodhaven.***

**4. Between 2:15 and 7 P. M. to continue the service now provided from New York to Woodhaven, of fifty-two (52) cars passing Livingston street and Boerum place, and from New York to Albany Avenue depot of thirty-six (36) cars, passing Livingston street and Boerum place, except that between 2:15 and 5:15 P. M. all cars now running only to Albany Avenue depot to be operated at least as far as Rockaway avenue.**

**5. Leaving Borough Hall to Rockaway avenue between 4:15 and 5:15 P. M., to provide a new service of six (6) cars to be operated upon the same route as that described in "3" above.**

**6. Between 5:15 and 6:45 P. M. from Borough Hall to provide a new service of fifteen (15) cars to Rockaway avenue to be operated over the new route as indicated in No. 3.**

**B. ST. JOHNS PLACE LINE.**

***Westbound.***

**1. Leaving Buffalo avenue between 6:45 and 9:15 A. M. by an increase of fifteen (15) cars, or by an increase from 23 to 38 cars to run at least as far east as City Hall.**

**2. Leaving Buffalo avenue to New York, between 9:15 A. M. and 1 P. M., by an increase of ten (10) cars, or by an increase from 20 to 30 cars.**

**3. Leaving Buffalo avenue to New York, between 1 P. M. and 3 P. M. by an increase of five (5) cars, or by an increase from 19 to 24 cars.**

**4. Leaving Buffalo avenue between 7:20 and 7:50 P. M., by an increase of two (2) cars, or by an increase from 6 to 8 cars.**

***Eastbound.***

**5. Leaving City Hall to Buffalo avenue, between 2:30 and 4 P. M., by an increase of three cars, or by an increase from 15 to 18 cars.**

**6. Leaving City Hall to Buffalo avenue between 4 and 5 P. M., by an increase of 6 cars, or by an increase from 10 to 16 cars.**

**7. Leaving City Hall to Buffalo avenue, between 5 and 6 P. M., by an increase of 8 cars, or by an increase from 16 to 24 cars.**

**8. Leaving City Hall to Buffalo avenue, between 6 and 6:30 P. M., by an increase of 4 cars, or by an increase from 12 to 16 cars.**

**9. Leaving City Hall to Buffalo avenue, between 6:30 and 7 P. M., by an increase of 2 cars, or by an increase from 10 to 12 cars.**

**10. Leaving City Hall to Buffalo avenue, between 10 and 11 P. M., by an increase of two (2) cars, or by an increase from 6 to 8 cars.**

**11. All night service between Rockaway avenue and New York. Leaving Rockaway avenue to New York and return, every half hour, between 1:30 and 4:30 A. M., a total of 7 cars.**

**And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements, and additions and to determine what period would be a reasonable time within which the same should be directed and executed.**

**All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.**

**Further ordered, That the said Nassau Electric Railroad Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.**

Hearings were held March 25th, April 8th, 16th, 22d and 27th.

**New York and Queens County Railway Company.—Condition  
of road bed and trolley poles on Dutch Kills line.**

Complaint Order No. 571.  
Discontinuance Order No. 604.

**COMPLAINT OF J. H. F. BOESE,**

**against**

**NEW YORK AND QUEENS COUNTY RAILWAY  
COMPANY.**

Complaint Order No. 571 (see form, note 1) issued June 12th.

The matters complained of were satisfied by the company and the following discontinuance order issued:

J. H. F. BOESE, <i>against</i> NEW YORK AND QUEENS COUNTY RAILWAY COMPANY,	<i>Complainant,</i> <i>Defendant.</i>	<b>DISCONTINUANCE ORDER</b> No. 504. June 26, 1908.
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"Condition of roadbed and trolley poles on Dutch Kills Line."

An order, No. 571, having been made herein on or about the 12th day of June, 1908, ordering and directing the New York and Queens County Railway Company to answer the complaint herein within a time therein specified, and the said New York and Queens County Railway Company having, on June 23, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied, and the complainant herein having, on June 23, 1908, notified this Commission in writing of such satisfaction,

Now, upon motion made and duly seconded, it is  
*Ordered*, That the proceedings herein be, and the same hereby are, discontinued.

**New York Central and Hudson River Railroad Company.**— Condition of tracks and crossings at yards at 30th street on the west side of Tenth avenue.

Complaint Order No. 284.  
 Hearing Order No. 346.  
 Dismissal Order No. 412.

COMPLAINT OF H. B. CORWIN  
*against*  
 NEW YORK CENTRAL AND HUDSON RIVER  
 RAILROAD COMPANY.

Complaint Order 284 (see form, note 1), issued February 21st.

Hearing Order No. 346 (see form, note 3), issued March 17th.

Hearings were held March 30th and April 7th.

The following dismissal order was issued:

H. B. CORWIN, <i>against</i> NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,	<i>Complainant,</i> <i>Defendant.</i>	<b>DISMISSAL ORDER</b> No. 412. April 10, 1908.
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"Condition of tracks and crossings at yards at Thirtieth street, on the west side of Tenth avenue."

After complaint order No. 284, dated February 21, 1908, and hearing order No. 346, dated March 17, 1908.

This matter coming on upon the report of the hearing had herein on March 30, 1908, and by adjournment duly had, on April 7, 1908, and it appearing that the said hearing was held pursuant to Order No. 346 of this Commission, made on the 17th day of March, 1908, upon the complaint and answer herein, and that the said order was duly served upon said H. B. Corwin, complainant, and upon said New York Central and Hudson River Railroad Company, and that the said service was by said company duly acknowledged and that the said hearing was held by and before the Commission on the matters in said complaint, answer and order specified on March 30, 1908, and April 7, 1908, at which hearing Mr. Commissioner Bassett presided, and H. M. Chamberlain, Esq., Assistant Counsel, appeared for the Public Service Commission for the First District and E. H. Boles, Esq., appeared for the New York Central and Hudson River Railroad Company, and there being no appearances for or on behalf of the complainant, and testimony having been taken upon said hearing.

Now, on motion of E. H. Boles, Esq., attorney for the New York Central and Hudson River Railroad Company,

*It is ordered,* That the said complaint be and the same hereby is dismissed and that this order be filed in the office of the Commission,  
*And it is further ordered,* That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission, upon its own motion or upon complaint duly made, in respect to any of the matters covered by said complaint and answer or the proceedings thereon

**Union Railway Company.—Condition of tracks at the east end of McComb's Dam Bridge.**

In the Matter  
of the

Hearing on the motion of the Commission on the question of the service and equipment of the UNION RAILWAY COMPANY in respect to the condition of its track at the east end of McComb's Dam bridge.

HEARING ORDER No. 240.  
February 4, 1908.

*It is hereby ordered,* That a hearing be had on the 19th day of February, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, in the borough of Manhattan, city and State of New York, to inquire whether the service, equipment and appliances of the Union Railway Company in respect to the transportation of persons in the First District are insufficient, improper or inadequate and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public or employees, or in order to secure adequate service and facilities for the transportation of passengers or property, and if such be found to be the fact, then to determine whether a change, addition and improvement in the equipment, appliances and service of said company as hereinafter set forth, is such as would be just, reasonable, safe, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the security and convenience of the public or employees, or in order to secure adequate service for the transportation of passengers.

That is to say, that the curved tracks between tangents at the point of intersection of the viaduct approach and the steel approach to the east end of McComb's Dam bridge be resurfaced.

And if such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Union Railway Company be given at least ten (10) days' notice of such hearing, by service upon it either personally or by mail of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held February 19th and March 10th.

**EXTENSIONS AND RELOCATION OF TRACKS BY ORDER OF THE COMMISSION.**

**Long Island Railroad Company.—Proposed deflection of a part of Atlantic avenue and relocation of the westbound platform at East New York.**

Case No. 1000.

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, practices, equipment and service of the LONG ISLAND RAILROAD COMPANY.

HEARING ORDER.  
November 24, 1908.

"Proposed deflection of a part of Atlantic avenue and relocation of the westbound platform at East New York."

*It is hereby ordered,* That a hearing be had on the 3d day of December, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may

be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire into the plan proposed by the Long Island Railroad Company for the relocation of a part of Atlantic avenue in Brooklyn, and the moving of the westbound platform at East New York.

*Further ordered,* That the said Long Island Railroad Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held December 3d and 17th.

Adjourned to January 12, 1909.

**Nassau Electric Railroad Company.— Extension of Fifth avenue surface line in Brooklyn to Bay Ridge avenue and 86th street — Waiting room at Bay Ridge and Fifth avenues.**

Hearing Order No. 294.  
Final Order No. 427.

In the Matter  
of the

Hearing on motion of the Commission on the question of improvements in and additions to the service of the NASSAU ELECTRIC RAILROAD COMPANY.

HEARING ORDER No. 294.  
February 28, 1908.

"Extension of Fifth Avenue Surface line in Brooklyn to Bay Ridge avenue and Eighty-sixth street — Waiting room at Bay Ridge and Fifth avenues."

*It is hereby ordered,* That a hearing be had on the 12th day of March, 1908, at two thirty o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Nassau Electric Railroad Company in respect to the transportation of passengers in the First District are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth in order to promote the security and convenience of the public or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition and improvement in regulations, practices, equipment, appliances and service of said company as hereinafter set forth are such as will be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service or facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

1. Whether all cars now operated on the Fifth avenue surface line of the Nassau Electric Railroad Company in Brooklyn and now stopping at Sixtieth street should be run through to Bay Ridge avenue; and whether all cars on said line now stopping at Bay Ridge avenue should be run through to Eighty-sixth street.

2. Whether a waiting room should be provided for the comfort and protection of passengers at the transfer point at the intersection of Bay Ridge and Fifth avenues.

3. Whether an additional cross-over should be installed at the junction of Bay Ridge and Fifth avenues for the prompt despatch of cars.

And if any such regulations, changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Nassau Electric Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held March 12th, 19th and 26th.

The following final order was issued:

## FINAL ORDER No. 427.

April 21, 1908.

This matter coming on upon the report of the hearing had herein on the 12th day of March, 1908, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order for hearing No. 294, made the 28th day of February, 1908, and returnable on the 12th day of March, 1908, and that the said Order No. 294 was duly served on the Nassau Electric Railroad Company and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 12th day of March, 1908, and by adjournment duly had on the 19th day of March, 1908, and by adjournment duly had on the 26th day of March, 1908, Mr. Commissioner Bassett presiding at each of said sessions, and Grosvenor H. Backus, Esq., appearing for the Commission, and Mr. Arthur N. Dutton, superintendent of transportation of the Nassau Electric Railroad Company, appearing for the company.

Now, it being made to appear, after the proceeding upon said hearing, that it is just, reasonable and proper that the Nassau Electric Railroad Company should be directed to make the changes in its regulations, practices and service, its equipment, appliances and tracks, which are hereinafter specified, in order to promote the convenience of the public,

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,  
*It is ordered:*

1. That on and after the 1st day of May, 1908, the Nassau Electric Railroad Company operate through to Bay Ridge avenue all cars on its Fifth avenue line, which have heretofore terminated their southerly run at Sixtieth street.

2. That on or before the 1st day of June, 1908, said company place an additional cross-over at the junction of Bay Ridge avenue and Fifth avenue.

*And it is further ordered,* That this order shall take effect immediately, and shall remain in force until modified by the further order of this Commission, but shall be without prejudice to the right of the Commission to make any further order or orders for additional hearings upon any of the matters specified in said order for hearing No. 294, made on the 28th day of February, 1908.

*And it is further ordered,* That within five days after service upon it of this order, said Nassau Electric Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

**New York Central and Hudson River Railroad Company.— Plan for relieving city streets from freight traffic and for removing Eleventh avenue tracks from street surface.**

In the Matter  
of the

Plan submitted by the AMSTERDAM CORPORATION for the relieving of city streets from freight traffic and for the removal of the Eleventh avenue tracks of the New York Central and Hudson River Railroad Company from the surface of Eleventh avenue.

HEARING ORDER No. 784.  
October 16, 1908.

*Resolved,* That a public hearing be held on the 11th day of November, 1908, at 8:00 p. m. on the plans submitted by William J. Wilgus for the Amsterdam Corporation, to relieve the city streets from freight traffic and to remove the west side tracks.

Hearings were held November 11th, 13th and December 4th.

**New York City Interborough Railway Company.**— Failure to construct railroads through the Borough of the Bronx for which franchises were obtained in 1903.

Complaint Order No. 478.  
Extension Order No. 516.  
Hearing Order No. 588.

COMPLAINT OF ROBERT C. WOOD  
*against*  
NEW YORK CITY INTERBOROUGH RAILWAY COMPANY.

Complaint Order No. 478 (see form, note 1), issued May 12th.  
Extension Order No. 516 (see form, note 2), issued May 22d.  
Hearing Order No. 588 (see form, note 3), issued June 19th.  
Hearings held June 30th, July 1st, 9th, 29th, August 5th, October 7th and 21st.

**Union Railway Company.**— Extension of Boscobel avenue line to the end of Washington Bridge.

Complaint Order No. 237.  
Extension Order No. 264.  
Hearing Order No. 407.  
Final Order No. 450.

COMPLAINT OF FRANCIS P. KENNEY, AS PRESIDENT OF THE HIBRIDGE TAXPAYERS' ALLIANCE  
*against*

UNION RAILWAY COMPANY AND FREDERICK W. WHITBRIDGE, ITS RECEIVER.

Complaint Order No. 237 (see form, note 1), issued February 4th.  
Extension Order No. 264 (see form, note 2), issued February 18th.  
Hearing Order No. 407 (see form, note 3), issued April 10th.  
Hearing held April 22d.

The following final order was issued:

FRANCIS P. KENNY, as President of the Highbridge Taxpayers Alliance, *Complainant*,  
*against*

UNION RAILWAY COMPANY and FREDERICK W. WHITBRIDGE, as Receiver of the Union Railway Company, *Defendants*.

"Extension of Boscobel Avenue Line to the end of Washington Bridge."

Under Order for Hearing No. 407, dated April 10, 1908.

ORDER No. 450.  
May 1, 1908.

This matter coming on upon the report of the hearing had herein on April 22, 1908, and it appearing that said hearing was held pursuant to Order No. 407 of

this Commission, made upon the complaint and answer herein, dated the 10th day of April, 1908, and returnable on the 22nd day of April, 1908, and that said order was duly served upon said Union Railway Company and upon said Frederick W. Whitridge, as receiver of said company, and it appearing that said hearing was had by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified, on the aforesaid date, before Mr. Commissioner Eustis presiding, Harry M. Chamberlain, Esq., assistant counsel, appearing for the Commission, and E. V. R. Ketchum, Esq., appearing for the complainant and M. S. Borland, Esq., of Messrs. Bowers and Sands, attorneys, appearing for said Union Railway Company and for Frederick W. Whitridge, as receiver of said company, and proof having been taken upon said hearing and it having been stipulated and agreed upon said hearing by and between the parties thereto that an order of this Commission should issue, directing and requiring the said Union Railway Company and said Frederick W. Whitridge, as receiver of said company, to extend the Boscobel avenue line operated by said company and by said Frederick W. Whitridge, as its receiver, within the city of New York, from the present westerly terminus of said line to the easterly line of Aqueduct avenue, and it having been agreed by and between the said parties that such order will be satisfactory to the complainant herein and will be satisfactory to and will be complied with by said Union Railway Company and by said Frederick W. Whitridge, as its receiver, and it having been made to appear after the proceedings on said hearing that thirty days would be a reasonable time within which such order should be directed to be executed,

Now, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*, That said Union Railway Company and said Frederick W. Whitridge, as receiver of said company, be and they hereby are directed and required to extend the tracks of said Boscobel avenue line from the present westerly terminus of said line to the eastern boundary of Aqueduct avenue and to construct such extension within thirty days from the date of the service of this order upon them. This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

*It is further ordered*, That said Union Railway Company and said Frederick W. Whitridge, as its receiver, notify the Public Service Commission for the First District within five (5) days after service of this order upon them whether the terms of this order are accepted and will be obeyed.

## STATIONS.

**Brooklyn Union Elevated Railroad Company.— Additional staircase at Marcy avenue station on Broadway route.**

**COMPLAINT OF JARED J. CHAMBERS**

*against*

**BROOKLYN UNION ELEVATED RAILROAD COMPANY.**

Complaint Order No. 358 (see form, note 1), issued March 30th.

**Brooklyn Union Elevated Railroad Company.— Passageway and transfer from Fulton street elevated to Fifth avenue elevated at Flatbush avenue.**

**COMPLAINT OF BROOKLYN LEAGUE**

*against*

**BROOKLYN UNION ELEVATED RAILROAD COMPANY.**

Complaint Order No. 413 (see form, note 1), issued April 14th.

**Brooklyn Union Elevated Railroad Company.— Unprotected condition of Van Sicklen avenue station of the City line.**

**COMPLAINT OF A. ZIEGLER AND I. BAER**

*against*

**BROOKLYN UNION ELEVATED RAILROAD COMPANY.**

Complaint Order No. 541 (see form, note 1), issued May 29th.  
The company answered June 11th.

The complainants did not furnish their addresses and notices of the proceedings addressed them in the neighborhood of the station in question were returned unclaimed. Nothing further was heard concerning the subject matter of the complaint.

**Brooklyn Union Elevated Railroad Company.— Shelter at Avenue L station on the Canarsie elevated lines.**

Hearing Order No. 718.  
Opinion of Commissioner Bassett.  
Final Order No. 782.

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, practices, equipment, and service of the BROOKLYN UNION ELEVATED RAILROAD COMPANY.

HEARING ORDER No. 718.  
September 11, 1908.

"Shelter at Avenue 'L' station on the Canarsie Elevated Lines."

*It is hereby ordered,* That a hearing be had on the 23rd day of September, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of said company, upon and near its Canarsie Elevated line, at its Avenue "L" station on the said line, in respect to the transportation of persons, freight or property with the State, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or devices used by said company in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

1. Whether said Brooklyn Union Elevated Railroad Company should be directed to equip the station at Avenue "L" on its Canarsie Elevated line with a waiting room and station canopy of approximately the same dimensions as the one at Flatlands avenue.

2. Whether said company should be directed to provide a cinder walk to the height of the rails, for the entire width of the private right of way, adjoining the platform at the west end of the station above mentioned.

And if such changes, improvements and additions be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Brooklyn Union Elevated Railroad Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held September 23d and 30th.

OPINION OF COMMISSION.

(Adopted October 13, 1908.)

COMMISSIONER BASSETT:—

The southerly part of the Canarsie branch of the Brooklyn Union Elevated Railroad is built upon the railroad's private right of way. At Avenue L station there is no waiting room or shelter excepting a small booth to accommodate the ticket agent. Trains are operated upon a 10 and 15 minute headway. A large number of people use this station and its use is constantly growing. Passengers waiting for trains must either stand on the unprotected station or else cross the tracks to the station when they see the train approach. There are three other island stations on this part of the railroad, two of which have comfortable waiting rooms and canopies extending over part of the platforms. I believe that the evidence shows that the erection of a waiting room and canopy similar to that now in use at the Flatlands avenue station is reasonably requisite. Let a final order be prepared requiring such a waiting room and canopy.

Thereupon the following final order was issued:

FINAL ORDER No. 782.

October 13, 1908.

This matter coming on upon the report of the hearing had herein on the 23d day of September, 1908, and the adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order of this Commission No. 718, made on the 11th day of September, 1908, and returnable on the 23d day of September, 1908, and that said order was duly served upon the Brooklyn Union Elevated Railroad Company, and that said service was by said company duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 23d day of September, 1908, and by adjournment duly had on the 30th day of September, 1908, at each of which sessions Mr. Commissioner Bassett presided, Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission and Mr. Arthur N. Dutton, Superintendent of Transportation of the Brooklyn Elevated Railroad Company, appearing for said company, and testimony being taken, and it being made to appear after the proceedings on said hearing that the regulations, practices, equipment, appliances and service of said company upon its Canarsie Elevated line at its Avenue L station on said line in respect to the transportation of persons within the First District are unreasonable, unsafe, improper and inadequate, and that changes in the practices, equipment, appliances and services in the particulars following at the place herein mentioned would be just, reasonable and proper, and that the repairs, improvements, changes or additions to or in the particulars following ought reasonably to be made in order to promote the security and convenience of the public and in order to secure adequate facilities for the transportation of persons.

Now, therefore, on motion duly made and seconded, it is hereby  
*Ordered,* That said Brooklyn Union Elevated Railroad Company by or before the 14th day of December, 1908, erect and instal at its Avenue L station on its Canarsie Elevated line a waiting-room and canopy similar in size, character and equipment in all respects to the waiting-room and canopy now in use at the Flatlands avenue station on said Canarsie line of said company, and at all times maintain said waiting-room and canopy in good order and repair.

*And it is further ordered,* That this order shall take effect immediately and shall remain in force until modified by the further order of the Commission.

*And it is further ordered,* That on or before the 24th day of October, 1908, said Brooklyn Union Elevated Railroad Company notify this Commission in writing whether the terms of this order are accepted and will be obeyed.

**Brooklyn Union Elevated Railroad Company.—Additional station signs and stairways.**

Extension Order No. 236.  
Extension Order No. 307.  
Extension Order No. 345.  
Extension Order No. 398.  
Extension Order No. 470.  
Extension Order No. 528.  
Extension Order No. 582.  
Extension Order No. 645.  
Rehearing Order No. 680.  
Rehearing Order No. 754.  
Opinion of Com'r Bassett.  
Extension Order No. 761.  
Extension Order No. 829.

In the Matter  
of the  
Regulations, practices and service of the BROOK-  
LYN UNION ELEVATED RAILROAD COMPANY.

ORDER FOR EXTENSION  
OF TIME NO. 236.  
February 4, 1908.

An order, No. 156, having been made on or about the 16th day of December, 1907, in the above entitled proceeding ordering and directing the Brooklyn Union Elevated Railroad Company to procure and place additional station signs at stations within the time therein specified, and the Brooklyn Union Elevated Railroad Company having applied for an extension of such time,

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to procure additional station signs above mentioned and to place said signs at their stations at the points mentioned in said Order No. 156 be, and the same hereby is, extended to and including the 1st day of April, 1908.

**EXTENSION ORDER No. 307.**

March 3, 1908.

An order, No. 156, having been made herein on or about the 16th day of December, 1907, ordering and directing the Brooklyn Union Elevated Railroad Company to remove the platform and station, including stairways, from the structure of said company at the intersection of Fulton and Tilbury streets, in the borough of Brooklyn by or before March 2, 1908, and the said Brooklyn Union Elevated Railroad Company, having, on March 2, 1908, applied in writing for an extension of such time,

Now, on motion, it is

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to remove the station stairways above mentioned be, and the same hereby is, extended to and including the 14th day of March, 1908.

**EXTENSION ORDER No. 345.**

March 17, 1908.

An order, No. 156, having been made herein on or about the 16th day of December, 1907, ordering and directing the Brooklyn Union Elevated Railroad Company to construct an additional stairway at the Gates avenue station and at the Halsey street station upon its Broadway line, on or before the 10th day of April, 1908, and the said Brooklyn Union Elevated Railroad Company having, on the 11th day of March, 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Brooklyn Union Elevated Railroad Company shall make the additions to stations above mentioned be, and the same hereby is, extended to and including the 10th day of May, 1908.

**EXTENSION ORDER No. 398.**

April 7, 1908.

An order, No. 156, having been made herein on or about the 16th day of December, 1907, ordering and directing the Brooklyn Union Elevated Railroad Company to procure and place additional station signs at stations within a time therein specified, and said time within which to place said signs having been extended to and including the 1st day of April, 1908, by the terms of Order No. 236, made

herein on the 4th day of February, 1908, and the said Brooklyn Union Elevated Railroad Company having on April first applied in writing for a further extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to procure additional station signs above mentioned, and to place said signs at their stations at the points mentioned in said Order No. 156 be, and the same hereby is, extended to and including the 15th day of May, 1908.

#### EXTENSION ORDER No. 470.

May 8, 1908.

An order of the Commission, No. 156, having been made herein on or about the 16th day of December, 1907, ordering and directing the Brooklyn Union Elevated Railroad Company to construct an additional stairway at the Gates avenue station and at the Halsey street station upon its Broadway line, on or before the 10th day of April, 1908, and the said time to complete the above mentioned improvements having been extended to and including the 10th day of May, 1908, by the terms of Order No. 345, made herein on the 17th day of March, 1908, and the said Brooklyn Union Elevated Railroad Company having on May 1, 1908, applied in writing for a further extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to comply with the terms of said Order No. 156, be and the same hereby is extended to and including the 10th day of July, 1908.

#### EXTENSION ORDER No. 528.

May 26, 1908.

An order, No. 156, having been made herein on or about the 16th day of December, 1907, ordering and directing the Brooklyn Union Elevated Railroad Company to procure and place additional station signs at stations within a time therein specified, and said time within which to place said signs having been extended to and including the 1st day of April, 1908, by the terms of Order No. 236, made herein on the 4th day of February, 1908, and the said time having been further extended to the 15th day of May, 1908, by the terms of Order No. 398, made herein on the 7th day of April, 1908, and the said Brooklyn Union Elevated Railroad Company having on May 15th applied in writing for a further extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to procure additional station signs above mentioned and to place said signs at their stations at the points mentioned in said Order No. 156 be, and the same hereby is, extended to and including the 10th day of June, 1908.

#### EXTENSION ORDER No. 582.

June 18, 1908.

An order, No. 156, having been made herein on or about the 16th day of December, 1907, ordering and directing the Brooklyn Union Elevated Railroad Company to procure and place additional station signs at stations within a time therein specified, and said time within which to place said signs having been extended to and including the 1st day of April, 1908, by the terms of Order No. 236, made herein on the 4th day of February, 1908, and the said time having been further extended to the 15th day of May, 1908, by the terms of Order No. 398, made herein on the 7th day of April, 1908, and the said time having been again extended to the 15th day of June, 1908, by the terms of Order No. 528, made herein on the 26th day of May, 1908, and the said Brooklyn Union Elevated Railroad Company having on June 15th applied in writing for a further extension of such time in the case of the placing of additional signs at the Kings Highway and Shore Road station on the Brighton Beach line.

Now, on motion made and duly seconded, it is

*Ordered*, That the time of the Brooklyn Union Elevated Railroad Company within which to place additional station signs at the Kings Highway and Shore Road station on the Brighton Beach line, provided for by Order No. 156 be, and the same hereby is extended to and including the 1st day of July, 1908.

#### EXTENSION ORDER No. 645.

July 21, 1908.

An order of the Commission, No. 156, having been made herein on or about the 16th day of December, 1907, ordering and directing, in paragraphs (2) and (3), the Brooklyn Union Elevated Railroad Company to construct an additional stairway at the Gates avenue station and at the Halsey street station upon its Broadway line, on or before the 10th day of April, 1908, and the said time to complete the above mentioned improvements having been extended to and including the 10th day of May, 1908, by the terms of Order No. 345, made herein on the 17th day of March, 1908, and the said time to complete the above mentioned improvements having been

## 636 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

further extended to and including the 19th day of July, 1908, by the terms of Order No. 470, made herein on the 8th day of May, 1908, and the said Brooklyn Union Elevated Railroad Company having, on July 20, 1908, applied in writing for a further extension of such time,

Now, on motion made and duly seconded, it is

Ordered, That the time of the Brooklyn Union Elevated Railroad Company within which to comply with the terms of paragraphs (2) and (3) of said order, No. 156, be and the same hereby is extended to and including the 1st day of October, 1908.

### REHEARING ORDER No. 660.

August 3, 1908.

An order, No. 156, having been made and filed herein on December 16, 1907, under and pursuant to an order for a hearing No. 89, made November 13, 1907, and thereafter having been duly served upon the Brooklyn Union Elevated Railroad Company, directing in paragraph 6 thereof said company before February 10, 1908, to repair the station and stairways on the Fulton street line of the said company at Lafayette avenue, and thereafter to keep the same in first-class order, whether used or not, and the said Brooklyn Union Elevated Railroad Company having, on July 20, 1908, applied in writing to this Commission for a rehearing in respect to the matter contained in paragraph 6 of said order No. 156, and sufficient reason for said rehearing having been made to appear,

Ordered, That said request for rehearing be granted, and that the said rehearing upon the said matter contained in said Order No. 156, entered and filed on December 16, 1907, be held on the 13th day of August, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the Order No. 156, whether the original Order No. 156, or any part thereof, as to matter in said paragraph 6, is in any respect unjust or unwise, and whether the said Order No. 156 should, as to said matters, be abrogated, changed, or modified.

And if any such abrogation, changes, or modifications are found to be such as ought to be made, then to determine the nature and extent of such changes or modifications of the said order, and to determine the time of taking effect of the order so changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the Brooklyn Union Elevated Railroad Company be given at least seven (7) days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matter aforesaid.

Hearing held August 13th.

### REHEARING ORDER No. 754.

October 2, 1908.

An order of the Commission, No. 156, having been made and filed herein on the 16th day of December, 1907, ordering and directing the Brooklyn Union Elevated Railroad Company, in paragraphs (2) and (3) thereof, to construct an additional stairway from the gallery landing to the northerly side of Broadway at the Gates avenue station and at the Halsey street station, and to widen the stairway now leading from the gallery to the station platforms at said stations as much as the side stringers will allow, this work to be completed by or before April 10, 1908, and said time for completion of said work having been extended successfully by the terms of Orders Nos. 345, 470 and 645, made herein on March 17th, May 8th and July 21, 1908, respectively, to and including the 1st day of October, 1908; and the said Brooklyn Union Elevated Railroad Company having subsequently, on September 30, 1908, applied in writing to this Commission for a rehearing in respect to the matters contained in paragraphs (2) and (3) of the Final Order No. 156 above mentioned, and sufficient reason for said rehearing having been made to appear.

Ordered, that said request for a rehearing be granted, and that the said rehearing upon the matters contained in paragraphs (2) and (3) of said Order No. 156, entered and filed on December 16, 1907, be held on the 9th day of October, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of Order No. 156, whether Order No. 156 or any part thereof, is unjust, or unwise, and whether the said Order No. 156 should be abrogated, changed, or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said Brooklyn Union Elevated Railroad Company be given at least five days' notice of such rehearing, by service upon it, either per-

sonally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered*, That the time of the said Brooklyn Union Elevated Railroad Company within which to comply with the terms of paragraphs (2) and (3) of Order No. 156 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held October 9th.

Adjourned to January 5, 1909.

OPINION OF COMMISSION.

(Adopted October 6, 1908.)

**COMMISSIONER BASSETT:**

By Order No. 156 the Brooklyn Union Elevated Railroad Company was required to repair in a certain manner their Lafayette Avenue station by February 10, 1908. The company accepted this order and stated that it would comply. After the said date passed an inspection showed that the company had not complied with the order, and on July 14, 1908, a resolution was passed by the Commission, directing the counsel to begin an action for the penalty in accordance with the law. Thereupon the company asked for a rehearing. It will not be the practice of the Commission when a company has seen fit to disobey an order and steps are initiated to enforce the penalty according to law, to allow the company to excuse itself by proposing a modification.

Inasmuch, however, as some confusion has occurred in this case, I recommend that the default of the company be excused and that the time to comply with the order be extended to November 13, 1908, but without any modification of the order itself. If the company decides that it wants to remove the station it must make an application for a modification of this order before such time, and such application will be heard on its merits. Let an order be prepared accordingly.

Thereupon the following extension order was issued:

EXTENSION ORDER No. 761.

October 6, 1908.

An order, No. 156, having been made and filed herein on the 16th day of December, 1907, under and pursuant to an order for a hearing, No. 89, made November 13, 1907, and said Order No. 156 having been duly served on the Brooklyn Union Elevated Railroad Company, which said company was directed by paragraph numbered (6) of said Order No. 156, to repair the station and stairways on the Fulton street line of said company, at Lafayette avenue, by or before February 10, 1908, and thereafter to keep the same in first-class order, whether used or not, and the said Brooklyn Union Elevated Railroad Company having, on the 20th day of July, 1908, applied in writing to this Commission for a modification of the terms of paragraph numbered (6) of said Order No. 156, and having to that end requested a rehearing in regard to some of the matters contained in said paragraph (6) of said Order No. 156, and the Commission having ordered a rehearing in regard to such matters, and said rehearing having come on or before the Commission on the 13th day of August, 1908, Mr. Commissioner McCarroll presiding, and Harry M. Chamberlain, Esq., assistant counsel to the Commission, attending, and Mr. Arthur N. Dutton, Superintendent of Transportation of the Brooklyn Union Elevated Railroad Company, appearing for said Company, and the Commission being of the opinion after such rehearing and the consideration of the facts, including those arising since the making of Order No. 156, that the time within which said Brooklyn Union Elevated Railroad Company should comply with the terms of said paragraph numbered (6) of said Order No. 156, should be extended to the 13th day of November, 1908.

Now, on motion duly made and seconded, it is  
*Ordered*, That the time within which said Brooklyn Union Elevated Railroad Company must comply with the terms of paragraph numberer (6) of said Order No. 156 be, and the same hereby is, extended to and including the 13th day of November, 1908.

EXTENSION ORDER No. 829.

November 10, 1908.

An order, No. 156, having been made and filed herein on the 16th day of December, 1907, under and pursuant to an Order for Hearing No. 89, made November

15, 1907, and said Order No. 156 having been duly served on the Brooklyn Union Elevated Railroad Company, which said company was directed by paragraph numbered (6) of said Order No. 156, to repair the station and stairways on the Fulton street line of said company at Lafayette avenue, by or before February 10, 1908, and thereafter to keep the same in first-class order, whether used or not, and the said Brooklyn Union Elevated Railroad Company having, on the 20th day of July, 1908, applied in writing to this Commission for a modification of the terms of paragraph numbered (6) of said Order No. 156, and having to that end requested a rehearing in regard to some of the matters contained in said paragraph (6) of said Order No. 156; and the Commission having ordered a rehearing in regard to such matters and having, as a result of such rehearing, made and served Extension Order No. 761, whereby the time within which said Brooklyn Union Elevated Railroad Company should comply with the terms of said paragraph numbered (6) of said Order No. 156 was extended to the 13th day of November, 1908; and said company having, under date of October 30, 1908, requested that the Commission take the matter under advisement and notify said company of its decision; and the Commission, being of the opinion that under the circumstances the time within which said company should be required to comply with the terms of said paragraph numbered (6) of said Order No. 156 should be further extended to the 13th day of January, 1909.

Now, on motion duly made and seconded, it is  
*Ordered*, That the time within which said Brooklyn Union Elevated Railroad Company must comply with the terms of paragraph numbered (6) of said Order No. 156 be, and the same hereby is, extended to and including the 13th day of January, 1909.

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**Brooklyn Union Elevated Railroad Company — Nassau Electric Railroad Company.— Lack of shelter at 39th street and Church avenue.**

**COMPLAINT OF LOUIS RUPRECHT  
against**

**BROOKLYN UNION ELEVATED RAILROAD COMPANY,  
NASSAU ELECTRIC RAILROAD COMPANY.**

Complaint Order No. 837 (see form, note 1), issued November 17th.

On December 21st the bureau of transit inspection reported that a waiting room had been erected at Thirty-ninth street and Church avenue.

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**Brooklyn Union Elevated Railroad Company.— Re-opening of station at Lafayette avenue and Fort Greene place.**

**Complaint Order No. 846.  
Hearing Order, Case 846.**

**COMPLAINT OF BROOKLYN INSTITUTE OF ARTS  
AND SCIENCES**

*against*

**BROOKLYN UNION ELEVATED RAILROAD COMPANY.**

Complaint Order No. 846 (see form, note 1), issued November 20th.

Hearing Order Case 846 (see form, note 3), issued December 8th.

Hearings were held December 15th, 22d and 31st.

**Brooklyn Union Elevated Railroad Company.—Terminal at Cypress Hills station.**

Final Order No. 256.  
 Extension Order No. 269.  
 Extension Order No. 457.  
 Extension Order No. 620.  
 Extension Order No. 854.

In the Matter  
 of the

Hearing on the motion of the Commission on the question of an improvement and addition to terminal facilities of the BROOKLYN UNION ELEVATED RAILROAD COMPANY at Cypress Hills Station.

ORDER No. 256.  
 WITH RESOLUTION AN-  
 NEXED.  
 February 11, 1908.

Under Order for Hearing No. 66, issued November 4, 1907.

This matter coming on upon the report of the hearing had herein on the 16th day of November, 1907, and various adjournments thereof, and it appearing that the said hearing was held by and pursuant to an order of this Commission made November 4, 1907, and that the said order was duly served upon the Brooklyn Union Elevated Railroad Company, and that the said service was by the said company duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on the 16th day of November, 1907, and by adjournment duly had on the 23d day of November, 1907, and by adjournment duly had on the 9th day of December, 1907, and by adjournment duly had on the 13th day of January, 1908, and at each of said sessions Mr. Commissioner Bassett presiding, and Arthur N. Dutton, Esq., Assistant General Manager of the Brooklyn Union Elevated Railroad Company, appearing for said railroad company, and William S. Menden, Esq., appearing for said company at said session of January 13, 1908, and it appearing that said Brooklyn Union Elevated Railroad Company on the 13th day of January, 1908, submitted to the Commission a plan marked "A" for the enlargement and improvement of the terminal of said company at Cypress Hills station, which said plan "A" is marked as Exhibit "I" in this proceeding, and that on the 23d day of January, 1908, J. F. Calderwood, as Vice-President and General Manager of the Brooklyn Union Elevated Railroad Company, Brooklyn Heights Railroad Company and the Brooklyn, Queens County and Suburban Railroad Company, submitted to the Commission a stipulation for and on behalf of each of said companies, providing for an exchange of transfers between said companies at various points pending the completion of the enlargement and improvement of said terminal at said Cypress Hills station, a copy of which stipulation is attached to this order;

Now, it being made to appear after the proceedings on the said hearing that the following requirements are just, reasonable and proper and such as ought reasonably to be made in order to secure adequate service or facilities for the transportation of passengers and to promote the convenience of the public;

Therefore, On motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered.*

1. That pending the completion of the enlargement and improvement of said terminal of the Brooklyn Union Elevated Railroad Company at Cypress Hill Station, in accordance with said plan "A" submitted by said company as Exhibit "I" in this proceeding on the 13th day of January, 1908, said company carry out the exchange of transfers with said Brooklyn Heights Railroad Company and said Brooklyn, Queens County and Suburban Railroad Company, at the points and in the manner specified in said stipulation of J. F. Calderwood, Vice-President and General Manager, hereto attached.

2. That the said Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District on or before the 1st day of May, 1908, when the proposed enlargement and improvement of said terminal at said Cypress Hills Station, in accordance with said plan "A" submitted on January 13, 1908, will be completed.

*And it is further ordered,* That this order shall take effect on the 15th day of February, 1908, and shall remain in force until modified by the further order of this Commission, without prejudice to the making and issuing of any further order or orders for hearing upon any of the matters involved in this proceeding.

*And it is further ordered,* That within five days from and after the service of this order the said Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

640 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Whereas, proceedings have been pending before the Commission under Order No. 66, made November 4, 1907, for improvements in the Cypress Hills terminal of the Brooklyn Union Elevated Railroad Company; and

Whereas, in said proceedings said company submitted to the Commission on the 13th day of January, 1908, a plan marked Plan "A" for the extensive enlargement and improvement of said terminal, which plan "A" was marked Exhibit "I" in said proceedings; and

Whereas, in said proceedings J. F. Calderwood, as Vice-President and General Manager of said Brooklyn Union Elevated Railroad Company, and as Vice-President and General Manager of the Brooklyn Heights Railroad Company, and as Vice-President and General Manager of the Brooklyn, Queens County and Suburban Railroad Company, submitted to the Commission a stipulation for and on behalf of each of said companies for an exchange of transfers between said companies at various points, which stipulation is as follows:

"BROOKLYN RAPID TRANSIT CO.  
"85 Clinton Street, U-PHC.  
Brooklyn, N. Y.

Office of Vice-President and  
General Manager.

January 23d, 1908.

Mr. E. M. BASSETT, Commissioner, Public Service Commission, 154 Nassau Street,  
New York City:

DEAR SIR.—Referring to the question of transfers between the Myrtle Avenue-Richmond Hill line, operated by the Brooklyn Heights Railroad Company, and the Jamaica Avenue line, operated by the Brooklyn, Queens County and Suburban Railroad Company, at the intersection of these two lines, Myrtle and Jamaica avenues, Richmond Hill, which was discussed at hearing on the 13th inst. before the Commission in connection with the proposed enlargement of the Cypress Hills Station of the Brooklyn Union Elevated Railroad Company, I beg herewith on behalf of the Brooklyn Heights Railroad Company, the Brooklyn, Queens County and Suburban Railroad Company and the Brooklyn Union Elevated Railroad Company to submit the following proposition:

Leaving aside all question of legality and without prejudice to any of the rights of the companies involved, but treating the question solely with reference to the exigency of the situation and with the intention of diverting from Cypress Hill a percentage of the traffic tributary to the Jamaica avenue line east of Richmond Hill, the Brooklyn, Queens County and Suburban Railroad Company and the Brooklyn Heights Railroad Company will concede the transfer privilege in question until the completion of the enlarged terminal by the Brooklyn Union Elevated Railroad Company at Cypress Hill and provide an exchange of transfers at Richmond Hill for westbound passengers of the Jamaica avenue line to westbound cars of the Myrtle avenue-Richmond Hill line, and for eastbound passengers of the Myrtle avenue-Richmond Hill line to eastbound cars of the Jamaica avenue line.

At Ridgewood, the westerly terminus of the Myrtle avenue-Richmond Hill line, transfers will be exchanged between that line and cars of the Brooklyn Union Elevated Railroad Company and the Brooklyn Heights Railroad Company, thus affording through passage between New York and Jamaica via Ridgewood for a single fare.

The arrangement above outlined, if approved by the Commission, will become effective February 15th proximo.

Yours truly,  
(Signed) J. F. CALDERWOOD,  
Vice-President and General Manager."

Now therefore, be it resolved, That the Commission approve of the proposed plan for an exchange of transfers at said points, and accept the proposition of said companies to maintain said exchange of transfers at said points until the completion of the said enlargement and improvement of said terminal at the Cypress Hills station of the said Brooklyn Union Elevated Railroad Company in accordance with said plan "A" which was marked Exhibit "I" in said proceedings under Order No. 66 of this Commission on the 13th day of January, 1908.

And be it further resolved, That a copy of this resolution be transmitted to each of said companies.

Upon application of the company the following extension orders were issued:

EXTENSION ORDER No. 269.

February 18, 1908.

An order of the Commission, No. 256, having been made herein on or about the 11th day of February, 1908, accepting the offer of the Brooklyn Union Elevated Railroad Company, the Brooklyn Heights Railroad Company and the Brooklyn, Queens County and Suburban Railroad Company to exchange transfers at Richmond Hill and at Ridgewood as a measure for diverting some traffic from the Cypress Hills terminal station until the completion of a new station at said point; and said Order No. 256, directing that its terms are to take effect within a time specified therein, and said Brooklyn Union Elevated Railroad Company having on

or about the 15th day of February, 1908, applied in writing for an extension of such time,

Now, on motion, it is

**Ordered**, That the time of the said Brooklyn Union Elevated Railroad Company within which to institute the transfer privileges above mentioned be, and the same hereby is, extended to and including the 22d day of February, 1908.

EXTENSION ORDER No. 457.

May 5, 1908.

An order, No. 256, having been made herein on or about the 11th day of February, 1908, ordering and directing that the Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District, before the 1st day of May, 1908, when the enlargement and improvement of the terminal at said Cypress Hills station will be completed, and the said Brooklyn Union Elevated Railroad Company having, on the 29th day of April, 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

**Ordered**, That the time within which the Brooklyn Union Elevated Railroad Company shall notify the Public Service Commission for the First District when the enlargement and improvement of the terminal at said Cypress Hills station will be completed be, and the same hereby is, extended to and including the 1st day of July, 1908.

EXTENSION ORDER No. 620.

July 7, 1908.

An order, No. 256, having been made herein on or about the 11th day of February, 1908, ordering and directing that the Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District, by the first of May, 1908, when the enlargement and improvement of the terminal at its Cypress Hills station will be completed, and said time within which to notify having been extended to and including the first day of July, 1908, by the terms of Order No. 457 made herein on the 5th day of May, 1908; and the said Brooklyn Union Elevated Railroad Company having on July 1, 1908, applied in writing for a further extension of said time,

Now, on motion made and duly seconded, it is

**Ordered**, That the time within which the Brooklyn Union Elevated Railroad Company shall notify the Public Service Commission for the First District when the enlargement and improvement of the terminal at the said Cypress Hills station will be completed be, and the same hereby is, extended to and including the first day of November, 1908.

EXTENSION ORDER No. 854.

November 24, 1908.

An order, No. 256, having been duly made and filed herein on or about the 11th day of February, 1908, which order required and directed that the Brooklyn Union Elevated Railroad Company should notify the Public Service Commission for the First District, on or before the first day of May, 1908, when the enlargement and improvement of the terminal at its Cypress Hills station would be completed; and the time within which said company shall notify the Commission as aforesaid having been extended to and including the first day of November, 1908, by successive orders of the Commission, Nos. 467 and 620; and the said Brooklyn Union Elevated Railroad Company having applied to this Commission for a rehearing of the said Order No. 256,

Now, on motion duly made and seconded, it is

**Ordered**, That said application for a rehearing be, and the same hereby is, denied; and it is

**further ordered**, That the time in which the Brooklyn Union Elevated Railroad Company shall notify the Public Service Commission for the First District when the enlargement and improvement of the terminal at the said Cypress Hills station will be completed in accordance with plan marked "A" heretofore submitted to this Commission by said company, be, and the same hereby is, extended to and including the first day of April, 1909.

**Interborough Rapid Transit Company.—Proposed Station on  
Columbus avenue at the intersection of 99th street.**

In the Matter

of the

Hearing on the motion of the Commission as to the regulations, equipment and service of the INTERBOROUGH RAPID TRANSIT COMPANY, in the respects hereinafter mentioned.

ORDER FOR HEARING

No. 254  
February 11, 1908.

*It is hereby ordered*, That a hearing be had on the 25th day of February, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may

be adjourned, at the rooms of the Commission, Number 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of said company upon its elevated lines operating on Columbus avenue, in the borough of Manhattan, city of New York, with respect to the transportation of persons, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service, in the particulars following, at the place herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company, in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers, namely:

Whether said company should be directed to construct and maintain a station or stations on its elevated structure on Columbus avenue at or near the intersection of Ninety-ninth street; and to equip said station or stations with one or more elevators or escalators for the conveyance of passengers to and fro between the station platform and the surface of the street; and to equip said station or stations adequately and completely in every respect for the accommodation of seven-car trains in each direction and for the receiving and discharging of passengers for said trains.

And if such change, improvement and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Interborough Rapid Transit Company be given at least ten days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and examine and cross-examine witnesses as to the matters hereinabove set forth.

Hearings were held February 25th, March 3d, 17th, 31st and April 20th.

Adjourned subject to call.

**Interborough Rapid Transit Company.— Failure to run elevators  
at station at Mott avenue and 149th street after 1 A. M.**

Complaint Order No. 293.  
Discontinuance Order No. 329.

**COMPLAINT OF WILLIAM H. TEN EYCK**  
*against*

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Complaint Order No. 293 (see form, note 1), issued February 28th.  
The matters complained of were satisfied by the company.

The following discontinuance order was issued:

WILLIAM H. TEN EYCK, <i>Complainant,</i> <i>against</i>	DISCONTINUANCE ORDER No. 329. March 10, 1908.
INTERBOROUGH RAPID TRANSIT COMPANY, <i>Defendant.</i>	

"Failure to run elevators at station at Mott  
avenue and One Hundred and Forty-ninth street  
after 1 A. M."

An order, No. 293, having been made herein on or about the 29th day of February, 1908, ordering and directing the Interborough Rapid Transit Company to answer complaint herein, within time therein specified, and the said Interborough Rapid Transit Company having, on March 6, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied.

Now, upon motion made and duly seconded, it is  
*Resolved*, That the proceedings herein be, and the same hereby are, discontinued.

**Interborough Rapid Transit Company.— Escalator at station at  
125th street and Eighth avenue.**

Complaint Order No. 288.  
Hearing Order No. 391.

COMPLAINT OF BOARD OF ALDERMEN

*against*

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Complaint Order No. 288 (see form, note 1), issued February 25th.

Hearing Order No. 391 (see form, note 3), issued April 3d.

Hearings were held April 15th, May 6th, and 20th, October 26th, November 10th, 17th, December 1st, 8th, 22d, and 29th.

Adjourned to January 12, 1909.

**Interborough Rapid Transit Company.— Signs and additional platform at the City Hall station of the Third avenue elevated road.**

Hearing Order No. 373.  
Final Order No. 456.

In the Matter  
of the

Hearing on motion of the Commission as to regulations, practices, equipment and service of the INTERBOROUGH RAPID TRANSIT COMPANY in the respects hereinafter mentioned.

HEARING ORDER No. 373.  
March 27, 1908.

"Signs and additional platform at the City Hall station of the Third Avenue Elevated Road."

*It is hereby ordered*, That a hearing be had on the 13th day of April, 1908, at 2:30 o'clock in the afternoon or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Interborough Rapid Transit Company at the City Hall Station upon its Third Avenue Elevated Road in respect to the transportation of persons, freight, or property within the State, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment and appliances of service in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminal facilities or other property or device used by said company in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

Whether said company should be directed to erect and maintain an additional platform at said City Hall station on the Third Avenue Elevated Railroad, such platform to be constructed west of the tracks, similar to the existing platform east of the tracks; and

Whether said company should be directed to display conspicuously signs at the said station, informing passengers that none other than Third avenue trains leave that station, and that in order to take Second avenue trains they must change cars at Chatham Square, the next station.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Interborough Rapid Transit Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held April 13th and 27th.

The following final order was issued:

FINAL ORDER No. 456.

May 1, 1908.

This matter coming on upon the report of the hearing had herein on the 13th day of April, 1908, and on the 27th day of April, 1908, and it appearing that said hearing was had pursuant to Order No. 373 of this Commission, made on the 27th day of March, 1908, and returnable on the 13th day of April, 1908, and that said hearing was had by and before the Commission on the matters in said order specified on the 13th day of April, 1908, and on the 27th day of April, 1908, before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission, and J. Osgood Nichols, Esq., appearing for the Interborough Rapid Transit Company and proof having been taken upon said hearing and it having been made to appear after the proceedings on said hearing that improvements, changes and additions to and in the City Hall station of the Third Avenue Elevated Road in the borough of Manhattan, city and State of New York, ought reasonably to be made in order to promote the security and convenience of the public and in order to secure adequate facilities for the transportation of passengers, namely,

1. That an additional platform should be constructed at said City Hall station west of the tracks at said station and similar to the existing platform east of the tracks at said station.

2. That two (2) or more signs should be conspicuously displayed at said station informing passengers that none other than Third avenue trains leave that station and that in order to take Second avenue trains passengers must change cars at Chatham Square, the next station.

And it having been made to appear after the proceedings on said hearing that an order of this Commission should issue, directing and requiring that the improvements, changes and additions hereinbefore mentioned should be made and that thirty (30) days would be a reasonable time within which the same should be directed to be executed:

Now, therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered,* 1. That said Interborough Rapid Transit Company be and it hereby is directed and required to construct and maintain on the westerly side of the tracks at the City Hall station of the Third Avenue Elevated Line in the borough of Manhattan, city and State of New York, a platform similar in design to the platform on the easterly side of said tracks at said station, which new platform shall be substantially a counterpart of the platform on the easterly side of said tracks and shall be of the location and dimensions shown in green on Drawing No. 7644 of said Interborough Rapid Transit Company, offered in evidence by said Interborough Rapid Transit on the hearing herein and received in evidence upon said hearing.

2. That said Interborough Rapid Transit Company be and it hereby is directed and required to prepare and conspicuously display at said City Hall station of the Third Avenue Elevated Road two (2) or more signs informing passengers that none other than Third avenue trains leave that station and that in order to take Second avenue trains they must change cars at Chatham Square, the next station, and using appropriate language for that purpose, said signs to be substantially constructed and placed in such positions at such station as to be most easily visible and to be most likely to convey to passengers the information mentioned.

3. *It is further ordered,* That said platform be constructed and said signs be prepared and displayed within thirty (30) days from and after the service on said company of a certified copy of this order.

This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

4. *It is further ordered,* That said interborough Rapid Transit Company notify the Public Service Commission for the First District within five (5) days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

**Interborough Rapid Transit Company.— Escalators at 155th street elevated station.**

Opinion of Counsel.  
Complaint Order No. 386.  
Extension Order No. 414.  
Hearing Order No. 459.

**COMPLAINT OF THE REPUBLICAN DISTRICT COMMITTEE**

*against*

**INTERBOROUGH RAPID TRANSIT COMPANY.**

**OPINION OF COUNSEL.**

March 6, 1908.

*Public Service Commission for the First District:*

SIRS:— Referring to your Secretary's letters of February 11th and March 3d, asking whether the Commission has power to order the installation of an elevator or escalator at the 155th street elevated railroad station, I beg to advise you as follows:

Under sections 49 and 50 of the Public Service Commissions Law, your Commission, whenever existing conditions warrant your action, may determine the reasonable, adequate and proper regulations, practices, equipment, appliances and service, or your Commission may direct improvements, changes or additions in tracks, terminals or in any other property or device in use.

It is a well settled rule of law that common carriers are obliged to equip their roads with all improvements which are recognized by railroad engineers as necessary to keep the road up to the modern standard of safety and efficiency. The mere fact that escalators and elevators used in connection with the operation of elevated railroads are comparatively new and were not contemplated at the time the elevated railroad franchises were granted is not a sufficient ground for the conclusion that your Commission cannot order their installation.

The question is one of reasonableness and while the fact that escalators are now in use at 23d street, 34th street, 59th street, 110th street and other stations on the elevated roads and in the subway does not prove that an order for construction of an escalator or elevator at 155th street is necessary or would be reasonable, yet in my opinion the fact that escalators or elevators are used on similar lines where the tracks are considerable distance above or below the street level, is evidence that escalators and elevators are recognized features of modern passenger transportation in New York City and I believe that your Commission has power to order their installation and operation.

An order issued by your Commission, compelling the erection of additional structures in or over the public streets, is not permission or authority for their erection. If additional burdens are to be placed on the street the company must secure the necessary consents and your Commission's order should contain a clause requiring the company to make and diligently prosecute applications for the proper consents to the additional burden, unless you are satisfied that the company now has the necessary local consents.

Respectfully yours,  
(Signed)

GEO. S. COLEMAN,  
*Counsel to the Commission.*

Complaint Order No. 386 (see form, note 1), issued March 31st.

Extension Order No. 414 (see form, note 2), issued April 14th.

Hearing Order No. 459 (see form, note 3), issued May 5th.

Hearings were held May 18th, June 3d, July 28th, September 28th, October 6th, November 10th and 17th.

Adjourned to January 12, 1909.

**Interborough Rapid Transit Company.—Inadequate stairways  
on Second avenue elevated road at 80th street.**

Complaint Order No. 369.  
Extension Order No. 399.  
Dismissal Order No. 467.

**COMPLAINT OF PATRICK J. MCGRATH  
against**

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Complaint Order No. 369 (see form, note 1), issued March 27th.

Extension Order No. 399 (see form, note 2) issued April 7th.

After investigation, the following dismissal order was issued:

PATRICK J. MCGRATH. <i>Complainant,</i> <i>against</i> INTERBOROUGH RAPID TRANSIT COMPANY. <i>Defendant.</i>	<b>DISMISSAL ORDER No. 467.</b> May 8, 1908.
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**"Inadequate stairways on the SECOND AVENUE  
ELEVATED ROAD at Eightieth street."**

An order of the Commission, No. 369, having been made herein on the 27th day of March, 1908, ordering and directing the Interborough Rapid Transit Company to answer or satisfy the charges set forth in the complaint herein, and the said Interborough Rapid Transit Company having made answer thereto on or about the 16th day of April, 1908, and it appearing after investigation that sufficient reason does not exist for directing the construction of an additional stairway or stairways as requested in the said complaint, it is

*Ordered*. That said complaint be, and the same hereby is, dismissed, and that this order be filed in the office of the Commission; and it is further

*Ordered*. That this order shall be without prejudice to such other action as the Commission may wish to take in this proceeding, or upon a new complaint in respect to any of the matters covered by the order No. 369 above mentioned.

**Interborough Rapid Transit Company.—Additional stairway at  
86th street on the Second avenue elevated road.**

Complaint Order No. 370.  
Extension Order No. 400.  
Dismissal Order No. 468.

**COMPLAINT OF RALPH FOLKS  
against**

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Complaint Order No. 370 (see form, note 1), issued March 27th.

Extension Order No. 400 (see form, note 2), issued April 7th.

Company answered May 9th.

After investigation, the following dismissal order was issued:

RALPH FOLKS. <i>Complainant,</i> <i>against</i> INTERBOROUGH RAPID TRANSIT COMPANY. <i>Defendant.</i>	<b>DISMISSAL ORDER No. 468.</b> May 8, 1908.
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**"Additional stairway at Eighty-sixth street on the  
Second Avenue Elevated Road."**

An order of the Commission, No. 370, having been made herein on the 27th day of March, 1908, ordering and directing the Interborough Rapid Transit Company to

answer or satisfy the charges set forth in the complaint herein, and the said Interborough Rapid Transit Company having made answer thereto on or about the 9th day of April, 1908, and it appearing after investigation that sufficient reason does not exist for directing the construction of an additional stairway or stairways as requested in the complaint, it is  
*Ordered*, That said complaint be, and the same hereby is, dismissed, and that this order be filed in the office of the Commission; and it is further  
*Ordered*, That this order shall be without prejudice to such other action as the Commission may wish to take in this proceeding, or upon a new complaint in respect to any of the matters covered by the Order No. 370 above mentioned.

**Interborough Rapid Transit Company.— Removal of station on Second avenue elevated from Allen and Rivington streets to Allen and Delancey streets.**

Opinion of Counsel.  
Hearing Order No. 366.  
Discontinuance Order No. 499.

\*[Recommendation of the late Railroad Commission under Railroad Law, section 161, for the establishment of a new station, Second Avenue Elevated, at Delancey street, in place of the Allen street station, cannot be enforced by the Public Service Commission under section 57 of the Public Service Act.

The Public Service Commission, under section 50, may direct the location of a new station if authorized by the company's franchise or may direct the company to apply for the proper consents and establish a new station.]

The Commission received a request to direct the removal of the Rivington street station of the Second avenue elevated line to Delancey street as recommended by the Railroad Commission. The matter was referred to the counsel of the Commission for its opinion as to the jurisdiction of the Commission, and as to the procedure to be followed. The counsel rendered the following opinion:

OPINION OF COUNSEL.

January 16, 1908.

TRAVIS H. WHITNEY, Esq., Secretary.

SIR.—I am in receipt of your letter of January 11th, transmitting some papers in connection with a proceeding before the late Board of Railroad Commissioners in regard to a petition of the Board of Aldermen of the city of New York for the location of new stations on the line of the Second Avenue Elevated Railroad at Delancey street, in place of the present stations at the corner of Allen and Rivington streets.

It appears that the Railroad Commission on June 25, 1907, made its recommendation to the Interborough Rapid Transit Company, under section 161 of the Railroad Law, that it construct new stations on the Second avenue line, up-town and down-town, at Allen and Delancey streets, and added that when the new stations were constructed the Board would consent, under section 34 of the Railroad Law, to the discontinuance of the present stations at Allen and Rivington streets.

Your question is as to the procedure, whether the Public Service Commission for the First District should undertake to enforce this recommendation of the Railroad Commission or should institute an entirely new proceeding, either on a complaint or upon its own motion.

I. It was provided by sections 161 and 162 of the Railroad Law that it should be the duty of a railroad to comply with such decisions and recommendations of the Board of Railroad Commissioners as are just and reasonable, and if it failed to do so that the Board should present the facts to the Attorney-General and that the Supreme Court should have power in its discretion, in all cases of decisions and recommendations by the Board which are just and reasonable, to compel compliance therewith by mandamus, subject to appeal to the General Term and the Court of Appeals, and that upon such appeal the General Term and the Court of Appeals might review and reverse upon the facts, as well as the law.

These sections have now been repealed by the Public Service Act and the Public Service Commission is authorized, in substance, whenever in its opinion a railroad corporation is failing or omitting to do anything required of it by law or by order of the Commission, or is doing or permitting anything contrary to or in violation of law or an order of the Commission, to commence an action or proceeding in the Supreme Court to stop or prevent the same, either by mandamus or injunction.

The recommendation of the Board of Railroad Commissioners, in my opinion, is neither a law or an order of the Commission and I doubt if the Public Service Commission could enforce the same by an application to the Supreme Court for

\* See footnote, page 9.

a mandamus, especially inasmuch as the sections of the law as to enforcement of such recommendations of the Railroad Commission, now repealed, provided for a quite different procedure and review. I have not overlooked section 83 of the Public Service Commissions Law, which in effect provides that the act shall not affect pending actions or proceedings, civil or criminal, brought by or against the Board of Railroad Commissioners, but the same may be prosecuted or defended in the name of the Public Service Commission, and that any investigation, examination or proceeding undertaken or instituted by the Railroad Commission prior to the taking effect of the act may be conducted to a final determination by the Public Service Commission in the same manner and under the same terms and conditions and with the same effect as though the Railroad Commission had not been abolished.

I think this section 85 does not affect the present transaction, inasmuch as the action or proceeding, civil or criminal, referred to in the section undoubtedly applies to such as are pending in court and that the investigation as to the station at Delancey and Allen streets was not pending but was ended June 25, 1907, by the recommendation now under consideration.

I am of the opinion, therefore, that the Public Service Commission cannot undertake the enforcement of the recommendation of the Board of Railroad Commissioners.

II. I think, however, a new proceeding, either on complaint or on a motion of the Commission, may be instituted in regard to this matter under section 50 of the Public Service Act, relating to the power of Commissions to order repairs, improvements or additions to or changes in tracks, terminals, terminal facilities or any other property used by a street railroad corporation, to promote the security or convenience of the public or employees or to secure adequate service or facilities for transportation of passengers or property. It is to be understood, however, that the order of the Commission for any such improvement is not a permission or an authority for the erection of a new station. This matter was referred to in the matter of the new Borough Hall station in Brooklyn, about which Mr. Blackmar wrote you under date of November 22d, 1907. Any order issued by the Commission upon this matter assumes that there is a franchise of the company sufficient to allow compliance with the order, and in case such franchise has not been obtained, the order should include a clause requiring the company to make and diligently prosecute an application or applications for such consents of proper authorities or others as are necessary for location of the new stations and occupation of the public streets for the same.

I return to you herewith papers transmitted by you.

(Signed) Respectfully yours,  
GEORGE S. COLEMAN,  
*Counsel to the Commission.*

In the Matter  
of the  
**Hearing on the motion of the Commission on the  
question of improvements in and additions to the  
service and equipment of the INTERBOROUGH  
RAPID TRANSIT COMPANY in the particulars  
hereinbelow mentioned.**

ORDER FOR HEARING  
No. 366.  
March 27, 1908

*It is hereby ordered*, That a hearing be had on the 13th day of April, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, equipment, appliances and service of the Interborough Rapid Transit Company in respect to the transportation of persons on its Second Avenue elevated line, within the First District, are unjust, unreasonable, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following will be just, reasonable, safe and proper, and whether such changes shall be put in force, observed and used on the Second Avenue elevated line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks or other property or devices used by said company ought reasonably to be made in the particulars following in order to promote the security or convenience of the public or in order to secure adequate service or facilities for the transportation of passengers, namely, whether said company should be directed to construct and maintain a station or stations, completely equipped for the accommodation of passengers in both directions, at the intersection of Delancey and Allen streets on the Second Avenue elevated line of said company, and whether said company should be directed to remove the present stations at the intersection of Allen and Rivington streets as soon as said station or stations at the intersection of Allen and Delancey streets can be completed.

And if such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time within which the same should be directed to be executed.

To the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

**Further ordered.** That the said Interborough Rapid Transit Company be given at least ten days' notice of such hearing by service upon it, either personally or

by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held April 13th, 27th, 30th and May 7th.

The following dismissal order was issued:

**DISMISSAL ORDER No. 499.**

May 15, 1908.

This matter coming on upon the report of the hearing had herein on the 13th day of April, 1908, and the adjournments thereof, and it appearing that said hearing was held pursuant to Order No. 366 of this Commission, dated the 27th day of March, 1908, and returnable on the 13th day of April, 1908, for the purpose of bringing on for hearing certain matters suggested by the complaint of East Side Property Owners' Association as to the advisability of removing the station on the Second avenue line of said company from the intersection of Allen and Rivington streets to the intersection of Allen and Delancey streets; and it appearing that said hearing was had by and before the Commission on the matters embraced in said complaint and in said order specified on the 13th day of April, 1908, and by adjournment duly had on the 27th day of April, 1908, and by adjournment duly had on the 30th day of April, 1908, and by adjournment duly had on the 7th day of May, 1908, Mr. Commissioner Eustis presiding, Grosvenor H. Backus, Esq., assistant counsel, appearing for the Commission and Alfred A. Gardner, Esq., appearing for the Interborough Rapid Transit Company and Jacob Katz, Esq., chairman of the executive committee of said East Side Property Owners' Association, appearing for said complainant, and proof having been taken; and it not appearing to the Commission that the present equipment, appliances and service of said Interborough Rapid Transit Company in respect to its station at Allen and Rivington streets are unjust, unreasonable, improper or inadequate; and it not appearing to the Commission that said station ought reasonably to be removed from Rivington street to Delancey street in order to promote the security and convenience of the public or in order to secure adequate service or facilities for the transportation of passengers,

Now, therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered.* That said complaint be and the same hereby is dismissed, and that this order be filed in the office of the Commission.

*And it is further ordered.* That this order shall be without prejudice to an order for further or additional hearings or action thereon by the Commission in respect to any of the matters covered by said complaint or said order for hearing or the proceedings thereon.

Later the question of the power of the Commission to require the construction of a new passenger station at Ralph avenue on the Long Island Railroad was referred to the counsel to the Commission, who rendered the following opinion:

**STATIONS.**

\*[Commission has power to require the construction of a new passenger station at Ralph avenue on the Long Island road notwithstanding proceedings under the Atlantic Avenue Improvement Act. Laws of 1897, chapter 400.]

**OPINION OF COUNSEL.**

May 8, 1908.

*Public Service Commission for the First District:*

SIRS.—Under date of February 11, 1908, I received from the secretary copy of a bill introduced in Assembly by Mr. Sargent (No. 186, Int. 184) to require the Long Island Railroad Company to construct a passenger station on its line at the intersection of Atlantic avenue and Ralph avenue in the borough of Brooklyn, together with a letter stating that the Stuyvesant Heights Board of Trade had inquired whether the Commission has the power, without an act of the Legislature, to establish a station at the point specified in the bill.

From the report of "The Board for the Atlantic Avenue Improvement," January 8, 1897, it appears that from the Nostrand avenue station the tracks are carried eight thousand feet east on an elevated structure to Ralph avenue. At Ralph avenue a transition is made to a subway. A station platform at Ralph avenue would therefore be on or near the surface of the street. From Ralph avenue the tracks run three thousand feet east through a subway to Stone avenue. The Vesta avenue station is a few hundred feet farther east. There is now no station between Nostrand avenue and Vesta avenue, a distance of about twelve thousand feet, and from the report of the Atlantic Avenue Improvement Board it appears that the intention was to have a few stations and to provide a rapid long distance haul on the Long Island Railroad, leaving to street railroad the local business.

Mr. Walter H. Meserole, who is a member and general superintendent of the Atlantic Avenue Improvement Board, informs me that his board has several times considered the application for a station at or near Ralph avenue, and is strongly opposed to any station at that point.

\* See footnote, page 9.

In my opinion your Commission has authority to direct the Long Island Railroad Company to establish stations on Atlantic avenue, and the following portion of the communication addressed to the Commission under date of January 16, in the matter of a proposed establishment of stations on the Second Avenue Elevated Railroad at Allen and Delancey streets, applies equally to the Long Island Railroad on Atlantic avenue:

"I think a new proceeding, either on complaint or on motion of the Commission, may be instituted in regard to this matter under Section 50 of the Public Service Act, relating to the power of commissions to order repairs, improvements or additions to or changes in tracks, terminals, terminal facilities or any other property used by a street railroad corporation to promote security or convenience of the public or employees, or to secure adequate service or facilities for transportation of passengers or property. It is to be understood, however, that the order of the Commission for any such improvement is not a permission or an authority for the erection of a new station. \* \* \* Any order issued by the Commission upon this matter assumes that there is a franchise of the company sufficient to allow compliance with the order and in case such franchise has not been obtained, the order should include a clause requiring the company to make and diligently prosecute an application or applications for such consents of proper authorities or others as are necessary for location of the new stations and occupation of the public streets for the same."

I have not overlooked the peculiar conditions that exist under chapter 499 of the Laws of 1897. The main purpose of that act was to remove from the surface of Atlantic avenue the tracks on which the Long Island Railroad Company operated and a board was created to carry out the improvement. The Long Island Railroad Company (and its lessor, the Nassau Electric Railroad Company), claimed that by virtue of the Act of 1897, and of chapter 497 of the Laws of 1899, and of a certain agreement with the city of Brooklyn, the railroad company acquired the fee of a strip thirty feet wide in the middle of Atlantic avenue. The Court of Appeals, however, in December, 1907, decided that the railroads acquired only a perpetual easement or right of way over such strip for railroad purposes. (Matter of Long Island Railroad Company, 189 N. Y. 428).

There is nothing in the character and extent of the railroad company's interest in this strip to prevent your Commission exercising its authority to order a station at Ralph avenue.

Section 2 of the Atlantic Avenue Improvement Act (chapter 499, Laws of 1897) reads as follows:

"Section 2.—The Atlantic Avenue Railroad Company of Brooklyn, or its lessee, the Long Island Railroad Company, is hereby authorized and permitted, at its election, to erect stations and platforms on either side of the railroad at any points along said depressed tracks to take the place of those existing on its through line of railroad between Brooklyn and points on Long Island, and sidings for the passage of trains, *provided such stations and sidings shall be below the surface of Atlantic avenue*, and for the support of the girders to sustain the said avenue over said depressed tracks and over said stations and sidings, proper structures may be extended over said right of way for such distance as shall be necessary for affording necessary support to the surface of the street. Stations and platforms along the depressed line shall be reached by stairs not less than five feet in width which shall terminate on the sidewalk on either side of Atlantic avenue. Said railroad companies are also authorized to erect and maintain a station or stations to take the place of such existing stations on either side of the elevated structure hereinbefore provided for. The use of stations, platforms and sidings, when constructed, shall in no way interfere with the grade of Atlantic avenue, or the free use of said avenue by the public save so far as the same may be affected by the supports for stations along the elevated structures hereinbefore provided for. All of which, however, shall be done under the approval, direction and sanction of the board herein-after provided for."

The effect of this section of the act, as I understand it, was to give the power to the railroad company to replace such old stations as were rendered useless by the elevation or depression of the tracks with new elevated or depressed stations to be located wherever the railroad might elect, provided the Atlantic Avenue Improvement Board should sanction, approve and direct the work.

The peculiar situation on Atlantic avenue may make it easier for the railroads to comply with an order from the Commission for a new station. Their exclusive right to use the thirty-foot strip for railroad purposes would probably enable them to use that portion of the street for a station. Should more room be needed the railroads could apply for the necessary municipal and local consent. The fact that before the Atlantic Avenue Improvement stations were maintained at or near Ralph avenue, when considered in relation to the sections of the act providing for replacing old stations with new ones, might render it easier for the companies to obtain such consent.

I perceive no reason why your authority to order the station would be in any way affected by the provision in chapter 499 of Laws of 1897 that the building of new stations should be done under the approval, direction and sanction of the Atlantic Avenue Improvement Board.

Respectfully yours,  
 (Signed) GEO. S. COLEMAN,  
*Counsel to the Commission.*

**Interborough Rapid Transit Company.—Enlargement of southbound platform at 116th street station on the Third avenue elevated road.**

In the Matter  
of the

Hearing on motion of the Commission as to regulations, practices, equipment, and service of the INTERBOROUGH RAPID TRANSIT COMPANY.

HEARING ORDER No. 552.  
June 5, 1908.

"Enlargement of southbound platform at One Hundred and Sixteenth Street station on the Third Avenue Elevated Road."

*It is hereby ordered*, That a hearing be had on the 15th day of June, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Interborough Rapid Transit Company upon and near its line on and along Third avenue in the borough of Manhattan at its One Hundred and Sixteenth street station on said line, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, inadequate or improper, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances, or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight, or property, namely:

Whether said Interborough Rapid Transit Company should be directed to widen the southbound station platform at its One Hundred and Sixteenth street station on the Third Avenue Elevated Line so that the portions now but five feet ten inches wide and three feet no inches wide shall be not less than eight feet, and to place the supports for the roof canopy at the edge furthest from the track so as not to present any obstruction to entering and disembarking passengers.

Whether said company should be directed to make other changes in its property, equipment or appliances, or in its regulations, practices and service upon said line at One Hundred and Sixteenth street station.

And if such changes, improvements, and additions, be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Interborough Rapid Transit Company be given at least eight (8) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings were held June 15th and 29th.

**Interborough Rapid Transit Company.—Enlargement of men's toilet room at 89th street station of the Third avenue elevated road.**

Hearing Order No. 593.  
Opinion of Com'r Eustis.  
Final Order No. 624.

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, practices, equipment and service of the INTERBOROUGH RAPID TRANSIT COMPANY.

HEARING ORDER  
No. 593.  
June 23, 1908.

"Enlargement of men's toilet room at Eighty-ninth street station on the Third Avenue Elevated Road."

*It is hereby ordered*, That a hearing be had on the 2d day of July, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be

adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of said company on its Third avenue line at the Eighty-ninth street station, in the borough of Manhattan, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

Whether said Interborough Rapid Transit Company should be directed to enlarge the men's toilet room at the Eighty-ninth street station on its Third avenue elevated road by removing to the south about two feet six inches the partition dividing said toilet room from the waiting room at said station, and to relocate the door leading from the station platform into said toilet room so as to open into the added space secured by the above addition to the said toilet room;

Whether said company should be directed to make other changes in its property, equipment, appliances, or in its regulations, practices and service upon said line at Eighty-ninth street station.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Interborough Rapid Transit Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearing held July 2d.

#### OPINION OF COMMISSION.

(Adopted July 7, 1908.)

COMMISSIONER EUSTIS:—

It appears that the Commission has heretofore ordered the construction of an additional stairway from the street to the northbound elevated station. The effect of this additional stairway will be to relieve the congestion at the exit immediately adjoining the toilet-room, and since the complainant expressed his opinion at the hearing that when this stairway is constructed the conditions complained of will be removed, I therefore recommend that an order be entered discontinuing the proceedings.

Thereupon the following final order was issued:

#### FINAL ORDER No. 624.

July 7, 1908.

Upon the report of the hearing had herein July 2, 1908, it appearing that said hearing was held pursuant to an order of this Commission, No. 593, made June 23, 1908, and returnable July 2, 1908, and it appearing that said order was issued on motion of the Commission after complaint made by Julius Goldburg, Esq., in regard to enlargement of men's toilet room at Eighty-ninth street station of Third avenue elevated road, and it appearing that said hearing order was duly served upon the Interborough Rapid Transit Company and that the said service was by said company duly acknowledged, and it appearing that said hearing was had on July 2, 1908, before Mr. Commissioner Eustis presiding, Arthur DuBois, Esq., appearing for the Commission and A. J. Kendall, Esq., appearing for the Interborough Rapid Transit Company, and it appearing after the proceedings on said hearing that certain structural changes in the Eighty-ninth street station have been ordered by the Commission and are about to be made by the Interborough Rapid Transit Company, and it appearing that these proposed changes are likely to result in the improvement of conditions on the Eighty-ninth street station and that it is not at present advisable for the Commission to order changes in the Eighty-ninth street station until after the completion of changes heretofore ordered by the Commission,

Now, therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered*, That this proceeding be and the same hereby is discontinued without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered by said order for hearing or the proceedings thereon.

**Interborough Rapid Transit Company.—Additions to platforms and stairways at Christopher street station on Ninth avenue elevated road.**

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, practices, equipment, appliances and service of the INTERBOROUGH RAPID TRANSIT COMPANY.

HEARING ORDER  
No. 626.  
July 10, 1910.

"Additions to platforms and stairways at Christopher street station on Ninth Avenue Elevated Road."

*It is hereby ordered,* That a hearing be had on the 26th day of July, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the said regulations, practices, equipment, appliances or service of said company upon and near its line at Christopher street station, on the Ninth avenue elevated road in the borough of Manhattan, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or services in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

Whether the said Interborough Rapid Transit Company should be directed to enlarge the station platforms, both northbound and southbound, at the Christopher street station on its Ninth avenue elevated road and provide additional stairway facilities as means of approach thereto.

Whether said company should be directed to make other changes in its property, equipment or appliances, or in its regulations, practices or service upon said line at Christopher street station.

And if such changes, improvements and additions, or any of them be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Interborough Rapid Transit Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinbefore set forth.

Hearings were held July 28th and August 18th.

**Interborough Rapid Transit Company.—Additional station signs on all elevated roads.**

Hearing Order No. 495.  
Final Order No. 591.  
Extension Order No. 675.

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, practices, equipment and appliances of the INTERBOROUGH RAPID TRANSIT COMPANY.

HEARING ORDER  
No. 495.  
May 15, 1908.

"Additional station signs on all elevated roads."

*It is hereby ordered,* That a hearing be had on the 25th day of May, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be

adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire and determine whether repairs, improvements, changes or additions to or in the terminals, terminal facilities or other property or device used by the Interborough Rapid Transit Company upon its elevated roads in the transportation of persons, freight or property within the State ought reasonably to be made in the particulars following in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of persons, freight or property, that is to say:

Whether the said company should be directed to erect two additional station signs at each station upon the elevated roads operated by it to indicate the streets where said stations are located;

Whether said company should be directed to make other changes in its property, equipment or appliances, or in its regulations and practices, upon said elevated roads within the First District.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered.* That said Interborough Rapid Transit Company be given at least eight days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held May 25th, June 8th and June 16th.

The following final order was issued:

FINAL ORDER No. 591.

June 19, 1908.

This matter coming on upon the report of the hearing had herein on the 25th day of May, 1908, the 8th day of June, 1908, and the 16th day of June, 1908; and it appearing that said hearing was had pursuant to Order No. 495 of this Commission, dated the 15th day of May, 1908, and returnable on the 25th day of May, 1908; and it appearing that said order was issued upon motion of the Commission after complaint duly filed with the Commission by Richard H. Eggleston, Esq., and the answer of said Interborough Rapid Transit Company thereto; and it appearing that said order was duly served upon said Interborough Rapid Transit Company and that said service was by it duly acknowledged; and it appearing that said hearing was had by and before the Commission on the matters in said order specified on the aforesaid dates before Mr. Commissioner Eustis, presiding, Richard H. Eggleston, Esq., complainant, appearing in person, Harry M. Chamberlain, Esq., Assistant Counsel, appearing for the Commission and Alfred A. Gardner, Esq., general solicitor for the Interborough Rapid Transit Company, appearing for the said company; and proof having been taken upon said hearing; and it having been made to appear after the proceedings on said hearing that additions to the station signs erected and maintained by said company upon the station platforms of stations upon the elevated lines of said company in the city and State of New York in the particulars hereinafter set forth ought reasonably to be made in order to promote the convenience of the public, and that it would be reasonable to require that such additions be made and completed by or before the 15th day of August, 1908,

Now, on motion of George S. Coleman, Esq., Counsel to the Commission.

*It is ordered:* (1) That said Interborough Rapid Transit Company be and it hereby is directed and required to erect, post and maintain upon the station platforms at all of the stations upon its elevated lines south of One Hundred and Twenty-fifth street and including stations at One Hundred and Twenty-fifth street, additional station signs as follows: At least one additional station sign giving in plain type the name of the station, to be placed at or near each end of each station platform at each of said stations, the letters and figures used to be at least as large as the letters and figures used upon signs already posted upon said platforms, the signs to be prepared and constructed and posted upon said platforms in the same manner as the signs already posted thereon and at the same height above the floor of the platform.

In case of the platform of the center island type for both uptown and downtown trains, the platform shall be treated under this order as two platforms and at least two additional signs shall be posted on each side thereof, at least two facing the uptown tracks and at least two facing the downtown tracks, said signs to be erected and posted at or near the ends of the platform in the manner hereinbefore provided.

(2) That said additional signs be prepared and erected and posted upon said platforms by or before the 15th day of August, 1908, and thereafter maintained thereon.

(3) That this order shall take effect as hereinbefore provided and shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

(4) That said Interborough Rapid Transit Company notify the Public Service Commission for the First District within five days after service of this order upon it whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

**EXTENSION ORDER No. 675.**

August 14, 1908.

An order of the Commission, No. 591, having been made herein on or about the 19th day of June, 1908, ordering and directing the Interborough Rapid Transit Company to place additional station signs on all of its platforms south of One Hundred and Twenty-fifth street on or before the 15th day of August, 1908, and the said Interborough Rapid Transit Company having, on August 13th, 1908, applied in writing for an extension of such time,

Now, upon motion made and duly seconded, it is  
*Ordered*, That the time of the Interborough Rapid Transit Company within which to comply with the terms of said Order No. 591 be, and the same hereby is, extended to and including the 15th day of September, 1908.

**Interborough Rapid Transit Company.**—Additional stairway at the 89th street station of the Third avenue elevated road.

Complaint Order No. 362.  
 Hearing Order No. 409.  
 Final Order No. 498.  
 Extension Order No. 682.  
 Extension Order No. 753.

**COMPLAINT OF THE BOARD OF ALDERMEN**

*against*

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Complaint Order No. 362 (see form, note 1) issued March 24th.

Hearing Order No. 409 (see form, note 2) issued April 10th.

Hearing held April 20th.

The following final order was issued:

<b>BOARD OF ALDERMEN,</b> <i>Complainants.</i> <i>against</i> <b>INTERBOROUGH RAPID TRANSIT COMPANY.</b> <i>Defendant.</i> <hr/> <i>"Additional stairway at Eighty-ninth Street station of the Third Avenue Elevated Railroad."</i> <hr/> <i>After Complaint Order No. 362 and Hearing Order No. 409.</i>	<b>FINAL ORDER No. 498.</b> <i>May 15, 1908.</i>
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This matter coming on upon complaint of the Board of Aldermen of the city of New York bearing date March 10, 1908, and the answer thereto of the Interborough Rapid Transit Company, dated March 31, 1908, and the report of the hearing had herein on the 20th day of April, 1908, and it appearing that the said hearing was held by and pursuant to an order of the Commission made and entered on the 10th day of April, 1908, and returnable on the 20th day of April, 1908, and that said order for hearing was duly served upon the said Interborough Rapid Transit Company and that the said hearing was held by and before the said Commission on the matters in said complaint, answer and order specified on the 20th day of April, 1908, before Mr. Commissioner Eustis, presiding, Arthur Du Bois, Esq., Assistant Counsel, appearing for the Commission, Alfred A. Gardner, Esq., and A. E. Mudge, Esq., appearing for the Interborough Rapid Transit Company, and evidence being taken at said hearing.

Now, it being made to appear by the complainant, answer and proceedings on said hearing that the equipment, appliances and service of the Interborough Rapid Transit Company in respect to transportation of persons within the First District are unreasonable, unsafe, improper and inadequate, and it appearing that the

changes in the equipment, appliances and service as hereinafter specified would be just, reasonable and proper and ought reasonably to be made and used in the transportation of persons in the First District, and that the improvements and changes in property and devices used by the Interborough Rapid Transit Company ought reasonably to be made in the manner specified in order to promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of passengers and that said improvements, changes and additions ought reasonably to be made within the times hereinafter specified.

Therefore, on motion of George S. Coleman, Counsel to the Commission,

*It is ordered:*

1. That the Interborough Rapid Transit Company construct an additional stairway leading from Eighty-ninth street to the Eighty-ninth street, uptown Elevated railroad station and the plans and specifications of such additional stairway be submitted to the Public Service Commission for approval.

2. That the construction of said additional stairway be completed not later than August 18, 1908.

*And it is further ordered,* That within five days the Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension orders were issued:

#### EXTENSION ORDER No. 682.

August 18, 1908.

An order of the Commission, No. 498, having been made herein on or about the 15th day of May, 1908, directing the Interborough Rapid Transit Company to construct an additional stairway at the Eighty-ninth street station of the Third Avenue Elevated Railroad, said stairway to be completed not later than August 18th, and the said Interborough Rapid Transit Company having, on August 15, 1908, applied in writing for an extension of such time,

*Now, on motion, It is*

*Ordered,* That the time of the Interborough Rapid Transit Company within which to comply with the terms of Order No. 498 be, and the same hereby is, extended to and including the 1st day of October, 1908.

#### EXTENSION ORDER No. 753.

October 2, 1908.

An order of the Commission, No. 498, having been made herein on or about the 15th day of May, 1908, directing the Interborough Rapid Transit Company to construct an additional stairway at the Eighty-ninth street station of the Third Avenue Elevated Railroad, said stairway to be completed not later than August 18th, 1908, and said time for the completion of said stairway having been extended to and including the 1st day of October, 1908, by the terms of Order No. 682 entered on August 18, 1908, and the said Interborough Rapid Transit Company having, on September 30, 1908, applied in writing for a further extension of such time,

*Now, on motion made and duly seconded, It is*

*Ordered,* That the time within which the Interborough Rapid Transit Company shall comply with the terms of Order No. 498 directing the erection of an additional stairway at the Eighty-ninth street station of the Third Avenue Railroad, be, and the same hereby is, extended to and including the 15th day of October, 1908.

### Interborough Rapid Transit Company.—Additions to 92d street station, Second avenue elevated.

Hearing Order No. 226.  
Final Order No. 494.  
Extension Order No. 529.  
Rehearing Order No. 545.  
Final Order No. 795.

In the Matter  
of the

Hearing on the motion of the Commission as to the regulations, practices, equipment and service of the INTERBOROUGH RAPID TRANSIT COMPANY, in the respects hereinafter mentioned.

ORDER FOR HEARING  
No. 226.  
January 31, 1908.

*It is hereby ordered,* That a hearing be had on the 12th day of February, 1908, at 3 o'clock in the afternoon, or at any time or times to which the same may

be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of said company, upon and near its line on and along Second avenue, in the borough of Manhattan, at its Ninety-second street station on said line, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or services in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

Whether said company should be directed to erect and maintain a larger ticket office than is now kept and maintained by it at the Ninety-second street station of its Second avenue elevated line, and if so, then to determine what addition or additions, extension or extensions of the present ticket office at said station ought reasonably to be made, and particularly whether said ticket office should be extended farther to the west.

Whether said company should be directed to make changes in, additions to or extensions of the main stairway at said station leading from the train platform to the underhanging gallery or transverse passageway at the foot thereof, and if so, then to determine what changes, additions or extensions thereof ought reasonably to be made and particularly whether a wider stairway than the one at present in use at said station ought properly to be constructed and maintained.

Whether said company should be directed to construct and maintain additions to or extensions of the underhanging gallery or transverse passageway at the said station, so that the same will extend further to the east than at present, and if so, then to determine the extent of such additions or extensions.

Whether said company should be directed to construct a new stairway from the easterly end of said underhanging gallery or transverse passageway at said station to the easterly side of Second avenue.

Whether said company should be directed to make other changes in its property, equipment or appliances or in its regulations, practices and service upon said line at Ninety-second street station.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

Further ordered, That the said Interborough Rapid Transit Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, or a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinbefore set forth.

Hearings were held February 12th, 20th, March 12th and 17th.

The following final order was issued:

FINAL ORDER No. 494.

May 15, 1908.

This matter coming on upon the report of the hearing had herein on the 12th day of February, 1908, 20th day of February, 1908, 12th day of March, 1908, and 17th day of March, 1908, and it appearing that said hearing was had pursuant to Order No. 226 of this Commission dated the 31st day of January, 1908, and returnable on the 12th day of February, 1908, and it appearing that the said order was duly served on the Interborough Rapid Transit Company on the 1st day of February, 1908, and that such service was by it duly acknowledged, and it appearing that said hearing was had by and before the Commission on the matters specified in said order No. 226 on the aforesaid dates before Mr. Commissioner Eustis, presiding, Harry M. Chamberlain, Esq., assistant counsel, and Arthur DuBois, Esq., assistant counsel appearing for the Commission, and Alfred A. Gardner, Esq., attorney, appearing for said Interborough Rapid Transit Company, and proof having been taken upon said hearing, and it having been made to appear after the proceedings on said hearing that changes in and improvements and additions to the Ninety-second street station of said company upon its Second Avenue Elevated line in the city and State of New York, and the passageways and stairways appurtenant thereto in the particulars following ought reasonably to be made in order to promote the security and convenience of the public and in order to secure adequate facilities for the transportation of passengers, namely:

1. That the underhanging gallery or transverse passageway at said station should be extended farther to the east than at present to such an extent and in such manner as to form a counterpart of the underhanging gallery or transverse passageway now existing at said station, and to permit the construction of a stairway therefrom to the walk on the easterly side of Second avenue, which stairway shall

## 658 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

be at least as wide as the stairway now existing on the westerly side of said avenue and in such manner that said underhanging gallery or transverse passageway will afford access to and an exit from the main stairway at said station extending from said underhanging gallery or transverse passageway to the train platform.

2. That a stairway should be constructed from the easterly end of said underhanging gallery or transverse passageway, when the same shall have been extended as aforesaid, to the sidewalk on the easterly side of Second avenue in such manner that such stairway will be at least as wide as the stairway now existing on the westerly side of said avenue.

3. That the width of the main stairway leading from said underhanging gallery or transverse passageway to the train platform at said station should be increased so that the same shall be not less than seven feet in width;

And it appearing to the Commission after the proceedings on said hearing that the time intervening between the date of this order and the 1st day of September, 1908, would be a reasonable time within which the changes, improvements and additions hereinbefore specified should be directed to be made;

Now, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*, (1) That said Interborough Rapid Transit Company be and it hereby is directed and required to extend the underhanging gallery or transverse passageway now existing at said station farther to the east than at present to such an extent and in such manner that the portion so extended shall form a counterpart of the passageway now existing at said station, and shall permit the construction of a stairway therefrom to the walk on the easterly side of Second avenue, which stairway shall be at least as wide as the stairway now existing on the westerly side of Second avenue, and in such manner that said underhanging gallery or transverse passageway will afford access to and an exit from the main stairway at said station extending from said underhanging gallery or transverse passageway to the train platform at said station.

2. That said Interborough Rapid Transit Company be and it hereby is directed and required to construct a stairway from the easterly end of said underhanging gallery or transverse passageway when the same shall have been extended as aforesaid, to the sidewalk on the easterly side of Second avenue in such manner that such stairway will be at least as wide as the stairway now existing on the westerly side of said avenue.

3. That said Interborough Rapid Transit Company be and it hereby is directed and required to increase the width of the main stairway extending from said underhanging gallery or transverse passageway to the train platform at said station so that the said stairway shall be not less than seven feet in width.

4. *It is further ordered*, That the changes, improvements and additions hereinbefore specified be made by said Interborough Rapid Transit Company and completed by said company not later than the 1st day of September, 1908.

5. *It is further ordered*, That the said Interborough Rapid Transit Company notify the Public Service Commission for the First District within five days after the service of this order upon it whether the terms of this order are accepted and will be obeyed.

6. This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

Upon application of the company the following extension order was issued:

### EXTENSION ORDER No. 529.

May 26, 1908.

An order, No. 494, having been made herein on or about the 15th day of May, 1908, ordering and directing the Interborough Rapid Transit Company to inform the Public Service Commission for the First District, within five (5) days after service of said order, whether the terms are accepted and will be obeyed; and the said Interborough Rapid Transit Company having on the 23d day of May applied in writing for an extension of such time,

*Ordered*, That the time within which the Interborough Rapid Transit Company shall make answer to said Order No. 494 be, and the same hereby is, extended to and including the 1st day of June, 1908.

Upon application of the company the following rehearing order was issued:

### REHEARING ORDER No. 545.

June 2, 1908.

An order, No. 494, having been made and filed herein on May 15, 1908, under and pursuant to an order for a hearing, No. 226, made January 31, 1908, and thereafter having been duly served upon the Interborough Rapid Transit Company, the same to take effect by or before the 1st day of September, 1908, and in and by said order the said Interborough Rapid Transit Company having been required to notify this Commission on or before the 22d day of May, 1908, whether the terms of said order, No. 494, are accepted and will be obeyed, and the said Interborough Rapid Transit Company having, on June 1, 1908, applied in writing to this Commission for a rehearing in respect to the matter contained in said order No. 494, and sufficient reason for said rehearing having been made to appear.

*Ordered*, That said request for rehearing be granted, and that the said rehearing upon the matters contained in said Order No. 494, entered and filed on May 15,

1908, be held on the 8th day of June, 1908, at 3:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including those arising after the making of the Order No. 494, whether the original order, No. 494, or any part thereof is in any respect unjust or unwise, and whether the said Order No. 494 should be abrogated, changed or modified.

And if any such abrogation, changes or modifications are found to be such as ought to be made, then to determine the nature and extent of changes or modifications of the said order, and to determine the time of taking effect of the order as changed or modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Interborough Rapid Transit Company be given at least five days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such rehearing said company shall be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

*Further ordered,* That the time of the said Interborough Rapid Transit Company within which to comply with the terms of said Order No. 494 be, and the same hereby is, extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held June 8th.

The following final order was issued:

<b>In the Matter of the Application of the INTERBOROUGH RAPID TRANSIT COMPANY for approval by the Commission of a plan for the construction of an additional stairway at the Ninety-second Street Station upon the Second Avenue Elevated Road.</b>	<b>ORDER No. 795</b> October 23, 1908. - -
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*Whereas,* The Interborough Rapid Transit Company has applied in writing, under date of October 17, 1908, for approval by the Commission of a plan hereinafter referred to, for the construction of an additional stairway at the Ninety-second street station under the Second Avenue Elevated Road of said Company, said plan modifying a former plan, marked Exhibit No. 1, June 8, 1908, offered in evidence at a hearing before the Commissioner under Hearing Order No. 545 held on June 8, 1908.

Now, on motion made and duly seconded, it is

*Resolved,* That the plan marked Drawing No. 8468, and dated October 8, 1908, be, and the same hereby is, approved.

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**Interborough Rapid Transit Company.—Inadequate transportation facilities at stations of the Third avenue elevated road in the Borough of the Bronx.**

Complaint Order No. 791.  
Extension Order No. 810.

**COMPLAINT OF THE TAXPAYERS' ALLIANCE OF THE BRONX  
against**

**INTERBOROUGH RAPID TRANSIT COMPANY.**

Complaint Order No. 791 (see form, note 1), issued October 20th.

Extension Order No. 810 (see form, note 2), issued October 30th.

The company answered November 16th denying the allegations set forth in the complaint.

An inquiry into the matters presented in this proceeding was conducted under Order No. 615 (see page 691).

Hearings were held December 1, 15th and 22d.

Adjourned to January 5, 1909.

**Interborough Rapid Transit Company.— Additional stairway at  
161st street station on the Third avenue elevated road.**

Hearing Order No. 410.  
Final Order No. 852.

In the Matter  
of the

Hearing on motion of the Commission as to the regulations, practices, equipment and service of the INTERBOROUGH RAPID TRANSIT COMPANY.

HEARING ORDER No. 410  
April 10, 1908.

"Additional stairway at One Hundred and Sixty-first street station on the Third Avenue Elevated Road."

*It is hereby ordered,* That a hearing be had on the 23d day of April, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or services of said company, upon and near its line on and along Third avenue, in the borough of the Bronx, at its One Hundred and Sixty-first Street station on said line, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found, then to determine whether changes in said regulations, practices, equipment, appliances or service in the particulars following, at the place or places herein mentioned, would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said Company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following, ought reasonably to be made in order to promote the security or convenience of the public or employees or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

Whether said Interborough Rapid Transit Company should be directed to extend to the east the mezzanine at the south end of the One Hundred and Sixty-first street station on its Third Avenue Elevated Line, and construct and maintain two stairways leading from said mezzanine to the street surface,— one running south and the other north.

Whether said company should be directed to make other changes in its property, equipment or appliances, or in its regulations, practices and service upon said line at One Hundred and Sixty-first street station.

And if such changes, improvements and additions be such as ought to be made as aforesaid, then to determine the extent thereof and what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Interborough Rapid Transit Company be given at least ten (10) days' notice of such hearing by service upon it, either personally or by mail, or a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters hereinbefore set forth.

Hearings held April 23d and May 6th.

The following final order was issued:

FINAL ORDER No. 852.  
November 20, 1908.

This matter coming on upon the report of the hearing had herein on April 23, 1908, and it appearing that said hearing was held by and pursuant to an order of this Commission No. 410, made April 10, 1908, and returnable on April 23, 1908, and that said order was duly served upon the Interborough Rapid Transit Company, and that said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on April 23, 1908, and by adjournment duly had on May 6, 1908, before Mr. Commissioner Eustis presiding, Arthur DuBois, Esq., appearing for the Commission, Alfred A. Gardner, Esq., and A. E. Mudge, Esq., appearing for the Interborough Rapid Transit Company.

Now, it being made to appear after the proceedings upon the said hearing that the regulations, practices, equipment, appliances and service of the Interborough Rapid Transit Company, in respect to the transportation of persons in the First District, has been and is in certain respects unreasonable, improper and inadequate, and it appearing that changes and improvements in the regulations,

**equipment and service of the said company, as below set forth, are such as are just, reasonable, adequate and proper, and ought reasonably to be made, in order to promote the convenience and safety of the public:**

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,  
**It is ordered,** That the Interborough Rapid Transit Company, at its One Hundred and Sixty-first street station on its Third Avenue Elevated Line, extend to the east the mezzanine at the south end of the said station and construct and maintain one stairway from the end of such mezzanine to the street surface, this stairway to run north, the width of this additional stairway to be not less than four (4) feet.

**And it is further ordered,** That this additional construction shall be completed not later than February 2, 1909.

**And it is further ordered,** That before beginning construction of those additional stairways plans of the same may be prepared and submitted to the Public Service Commission for the First District for approval.

**Ordered,** That before November 25, 1908, the Interborough Rapid Transit Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### Nassau Electric Railroad Company.—Station at Twenty-fifth avenue on the West End line.

Complaint Order No. 253.

Hearing Order No. 334.

Dismissal Order No. 379.

COMPLAINT OF MARGARET MAGER

against

NASSAU ELECTRIC RAILROAD COMPANY.

Complaint Order No. 253 (see form, note 1), issued February 11th.

The following hearing order "on motion of the Commission" was issued to include the matters complained of and certain other matters relating thereto:

In the Matter

of the

Hearing upon motion of the Commission upon the question of Improvements in and additions to the service and transportation facilities of the NASSAU ELECTRIC RAILROAD COMPANY.

HEARING ORDER No. 334.  
March 13, 1908.

"Station at Twenty-fifth avenue on the West End Line."

*It is hereby ordered,* That a hearing be had on the 25th day of March, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the Nassau Electric Railroad Company, in respect to transportation of persons in the borouh of Brooklyn, State of New York, are unreasonable, improper or inadequate, and whether changes, improvements and additions thereto ought reasonably to be made in the manner below set forth, in order to promote the security and convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, and if such be found to be the fact, then to determine whether a change, addition or improvement in regulations, practices, equipment, appliances and service of the said company, as hereinafter set forth, are such as may be just, reasonable, adequate and proper and ought reasonably to be made to accommodate the passenger traffic offered to it and to promote the convenience of the public, or in order to secure adequate service and facilities for the transportation of passengers, that is to say:

Whether the following changes, additions and regulations should be put into effect:

- That the said Nassau Electric Railroad Company cause all trains from Coney Island bound for New York to make a regular stop for taking on North-bound passengers, immediately north of Twenty-fifth avenue;

- That said company discontinue the use of the present station directly south of Twenty-fifth avenue upon the east side of the tracks.

3. That said Company construct a suitable shelter and inclosed waiting-room on the northwest corner made by the intersection of the company's private right of way and Twenty-fifth avenue, to be situated so as not to interfere with the view of trains approaching from the north or the south.

4. That said company build a plank crossing of the usual type for the use of passengers crossing from the proposed shelter to the platform on the northerly side of the tracks, said planking to be about twenty feet wide;

5. That said company install a suitable system whereby to inform passengers as to whether the next New York bound train will leave from the yard north and west from the proposed shelter station, or from the platform on the northerly side of the private right of way.

And if any such changes, regulations, improvements and additions be found to be such as ought to be made as aforesaid, then to determine the details of such changes, improvements and additions and to determine what period would be a reasonable time within which the same should be directed and executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the said Nassau Electric Railroad Company be given at least ten days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held March 25th.

The following dismissal order was issued:

DISMISSAL ORDER No. 379.

March 27, 1908.

This matter coming on upon the report of the hearing had herein on March 25, 1908, and it appearing that the said hearing was held pursuant to an order of this Commission No. 334, made on March 13, 1908, issued upon motion of the Commission after the complaint and answer herein and that said order was duly served upon said Nassau Electric Railroad Company and that the said service was by said company duly acknowledged and that the said hearing was held by and before the Commission on the matters in said complaint, answer and order specified on March 25, 1908, at which hearing Mr. Commissioner Bassett presided, Harry M. Chamberlain, Esq., appearing for the Commission and Arthur N. Dutton, Esq., appearing for the said Nassau Electric Railroad Company, and there being no appearances by or on behalf of the complainant,

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered,* That the said complaint be and the same hereby is dismissed and that this order be filed in the office of the Commission.

*And it is further ordered,* That this order shall be without prejudice to an order for further or additional hearings and action thereon by the Commission in respect to any of the matters covered in said complaint, answer and order or the proceedings thereon.

Nassau Electric Railroad Company.— Turnstile at 16th street station, Fifth avenue elevated line.

Complaint Order No. 328.  
Extension Order No. 380.

COMPLAINT OF JEREMIAH J. COUGHLAN

*against*

NASSAU ELECTRIC RAILROAD COMPANY.

Complaint Order No. 328 (see form, note 1), issued March 10th.

Extension Order No. 380 (see form, note 2), issued March 27th.

The company answered March 31st stating that arrangements had been made to move the ticket booth to the center of the room which would permit passengers on both sides of the ticket office instead of on one side only. It was thought this would relieve the congestion complained of.

**New York City Interborough Railway Company.—Lack of shelter on Aqueduct avenue line.**

Extension Order No. 204.  
Rehearing Order No. 214.  
Final Order No. 251.

Upon application of the company the following extension order was issued:

JOHN H. MACCRACKEN, <i>Complainant,</i> <i>against</i> <b>NEW YORK CITY INTERBOROUGH RAILWAY COMPANY,</b> <i>Defendant.</i>	ORDER FOR EXTENSION OF TIME, No. 204. January 14, 1908.
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An order having been made on or about the 31st day of December, 1907, in the above entitled proceeding, ordering and directing the New York City Interborough Railway Company to remedy the cause of complaint herein, within a time therein specified, and the New York City Interborough Railway Company having applied for an extension of such time,

Now, on motion, it is

*Ordered*, That the time of the New York City Interborough Railway Company within which to elect which of the two courses as set forth in such order it shall adopt and the time within which it shall notify the Public Service Commission for the First District whether the terms of the said order are accepted and will be obeyed be and the same hereby is extended to and including the 20th day of January, 1908.

Upon application of the company the following rehearing order was issued:

ORDER FOR REHEARING, No. 214.

January 21, 1908.

An order, No. 183, having been made and filed herein on December 31, 1907, under and pursuant to an order for a hearing No. 101, made November 20, 1907, and thereafter said order No. 183 having been duly served upon the New York City Interborough Railway Company; and in and by the terms of said order the said New York City Interborough Railway Company having been required on or before January 10, 1908, to elect which of the two courses as set forth in said order it would adopt; and said time within which to elect having been extended to and including the 20th day of January, 1908, by an order, No. 204, made January 14, 1908; and the said New York City Interborough Railway Company having on January 20, 1908, signified in writing its election under order 183, coupled, however, with a request that the terms of said order be modified; and sufficient reason being made to appear:

*Ordered*, That a rehearing upon the matters contained in said order 183 be held on the 29th day of January, 1908, at 2 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, 154 Nassau street, borough of Manhattan, city and State of New York, to determine after such rehearing and after consideration of the facts, including facts arising since the making of the order No. 183, whether the original order No. 183 or any part thereof is in any reason unjust or unwarranted, and whether the said order No. 183 should be abrogated, changed or modified.

And if any such abrogation, changes or modification are found to be such as ought to be made, then to determine the nature and extent of changes or modification of the said order, and to determine the time of the taking effect of the order as changed and modified.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Interborough Railway be given at least five days' notice of such rehearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company shall be offered a reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid:

*Further ordered*, That the time of the said New York City Interborough Railway Company to comply with the terms of said order No. 183 in so far as they require said company to keep and maintain a standing car on its tracks at the One Hundred and Eighty-first street terminal between the hours of 1 A. M. and 8 A. M., for the use of passengers transferring from the Subway to its lines at One Hundred and Eighty-first street, be and the same hereby is extended until such time as the Commission shall enter an order upon the rehearing herein provided for.

Hearing held January 29th.

The following final order was issued:

**FINAL ORDER No. 251.**

February 11, 1908.

An order, No. 183, having been made herein on or about the 31st day of December, 1907, after a hearing duly had, ordering the defendant either to construct a proper, substantial and adequate waiting-room or shelter for passengers transferring from the Subway to its lines at One Hundred and Eighty-first street and St. Nicholas avenue, at a point on a level with such street railway tracks, and not more than fifty (50) feet distant therefrom, or at its election, at all times during the day and night to hold at such point a car for the use of waiting passengers until the arrival of the next or succeeding car either of the same or different lines and further ordering the said company within ten (10) days after the service of such order to advise the Commission which of said courses it elected to pursue, and an order, No. 204, extending the time in which so to elect having been made on or about the 14th day of January, 1908, and the defendant having on or about the 20th day of January, 1908, notified the Commission that it would keep and maintain a standing car on its tracks at the said point throughout the entire day, excepting between the hours of 1 A. M. and 6 A. M., for the use of passengers transferring from the Subway to its lines on One Hundred and Eighty-first street, and further stating its belief that such a standing car would render more satisfactory accommodations to the traveling public and would cause less interruption in the service than the practice of holding every car until the arrival of the next or succeeding car as ordered by the Commission, and requesting that the said order, No. 183, be modified so that the maintenance of the standing car in the manner above described would be a compliance therewith, and an order for a rehearing, No. 214, having been duly made herein, on the 21st day of January, 1908, and a rehearing having been duly had on the 29th day of January, 1908, at which Mr. Commissioner Eustis presided, and Leroy T. Harkness, Esq., Assistant Counsel, appeared for the Commission, and Alfred A. Gardner, Esq., and A. E. Mudge, Esq., appeared for the defendant,

Now, upon all the proceedings and upon the hearing and the rehearing heretofore had herein,

*It is ordered*, That the action of the New York City Interborough Railway Company in keeping such standing car upon its tracks at the point referred to, at all hours except between 1 A. M. and 6 A. M., shall be deemed a substantial compliance with the provisions of the said order No. 183, subject, however, to the approval of the proper city authorities being obtained to the keeping of such standing car upon the street. It is, however, provided, that if the use of such standing car be discontinued for any cause, the defendant shall immediately notify the Commission of such discontinuance and within ten days thereafter advise the Commission which of the said courses contained in said order No. 183 it will then elect to pursue.

**Sea Beach Railway Company and Brooklyn Heights Railroad Company.— Re-establishment of station at Kings Highway.**

Complaint Order No. 518.  
Discontinuance Order No. 632.

COMPLAINT OF WILSON W. THOMPSON  
*against*

SEA BEACH RAILWAY AND THE BROOKLYN  
HEIGHTS RAILROAD COMPANY.

Complaint Order No. 518 (see form, note 1) issued May 22d.

The matters complained of were satisfied and the complainant so notified the Commission. The following discontinuance order was issued:

WILSON W. THOMPSON, <i>Complainant,</i> <i>against</i> SEA BEACH RAILWAY COMPANY, BROOKLYN HEIGHTS RAILROAD COMPANY, <i>Defendants.</i>	DISCONTINUANCE ORDER No. 632. July 14, 1908.
"Re-establishment of station at Kings Highway."	

An order, No. 518, having been made herein on or about the 22d day of May, 1908, ordering and directing the Sea Beach Railway Company and the Brooklyn Heights Railroad Company to answer the complaint herein within a time therein

specified, and the said Brooklyn Heights Railroad Company and the said Sea Beach Railway Company having on June 1, 1908, made answer thereto, from which it appears that the matters complained of in the said complaint above mentioned have been satisfied and the complainant herein having on July 10, 1908, notified this Commission in writing of such satisfaction,

Now, upon motion made and duly seconded, it is  
*Resolved*, That the proceedings herein be, and the same hereby are discontinued.

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**South Brooklyn Railway Company.—Cinder platforms on Gravesend avenue.**

Hearing Order No. 184.  
Opinion of Commissioner Bassett.  
Final Order No. 249.

COMPLAINT OF FRANK BENNETT  
*against*

SOUTH BROOKLYN RAILWAY COMPANY.

Hearing Order No. 184 (see form, note 1), issued January 3d.  
Hearings were held January 16th and 22d.

OPINION OF COMMISSION.  
(Adopted February 7, 1908.)

COMMISSIONER BASSETT:—

The line of the South Brooklyn Railway Company consists of a double track of rails through Gravesend avenue, Brooklyn. The company claims to have a steam franchise through this street and also claim certain rights to use the land which are greater than those obtained by the grant of an ordinary street railroad franchise. The tracks consist of heavy T-rails laid on ties, and except at street crossings it has been quite impossible for teams to pass from one side of the street to the other. Recently the city altered the grade of Gravesend avenue and the officials of the borough of Brooklyn cut down the street level to the grade in whole or in part. The result was that the stations at Kensington, Eighteenth avenue and Parkville were left from one foot to four feet above the grade of the street. The track between these stations is also considerably above the street grade. Undoubtedly, the only remedy of this very bad situation is a lowering of the tracks to the new grade of the street and the erection of new platforms in conformity therewith. The city has taken steps to compel the operating company to lower its tracks and the company has lowered its tracks almost to the grade at Sixteenth avenue station. The company, however, by reason of its claim of unusual rights on this street desires to have a curb placed between its tracks and the roadway so that vehicles cannot be driven upon or across the tracks. This concession the borough officials decline to allow and for the present the dispute between the company and the city is unsettled and the street is in exceedingly bad condition. I am of the opinion that the commission should allow the city to settle the establishment of its own proper grade and enforce its rights of removing encumbrances or compelling the operating company to adjust its tracks to the new conditions. The condition of the platforms, however, has to do with the safety of the passengers, and on this account it would seem that the jurisdiction of the commission is properly exercised in regard to them. Upon a complaint in the usual form an order for satisfaction or answer was made and served upon the defendant. This met with only partial compliance, whereupon a hearing was had regarding the safety of the four above mentioned stations. The evidence shows that the platform at Sixteenth avenue is now reasonably safe for passengers, although access to and from this platform is difficult, the streets and walks being in very bad condition, and it is hoped that the city will before long cause an improvement in this regard.

At Kensington station the platforms consist of solid piles of earth with soft coal ashes for the top, the whole being bound within heavy timbers. These are substantially at the correct height for passengers to embark and disembark. While the hearings were proceeding the company added timber steps on the sides of each

of the two platforms, extending about eighty-five feet. It is about four feet from the top of the platform to the roadway on each side and there is a tendency for the ashes to work down and narrow the width of the top of the platform where it is not bound by timbers. It is in my opinion necessary and desirable that timbers should be placed on the outer side of both platforms to a total distance of at least 120 feet, which is the distance between platforms of a five-car train. This would cause an additional timbering of about thirty-five feet on each platform. As it is no more difficult to place the timbers so that they make steps they should be arranged in this manner. The part of the platform between the timbers should be maintained level with the tops of the timbers as trains do not always stop at the same part of the platform. The entire top of the platform whether timbered or not should be maintained at the same width as the timbered portion and with the level surface.

At the Eighteenth avenue station the platforms are similarly constructed of earth and soft coal cinders. There is a timber along the inside edge of each platform but nothing along the outside edge to hold the surface in place. The top of these platforms is about eighteen inches above the street level. Although they now appear to be in fair condition, it will, in my opinion, be only a few months before the outside edge of the cinder platform is worn away, thus lessening the width of the level top and again producing the dangerous condition that has been complained of. On this account an outside retaining timber should be placed for at least 120 feet on the outside edge of each platform.

At the Parkville station the track level and street level correspond fairly closely, and the platforms do not stand high above the street. Parts of the platforms, however, now present a narrower top than 3½ feet. The entire platform on each side of the tracks should be made at least 3½ feet wide.

The order should direct that the platforms be maintained in as good condition as is now directed. Thirty days will in my opinion be a sufficient time for the company to comply.

Thereupon the following final order was issued:

In the Matter of <b>FRANK BENNETT,</b> <i>Complainant,</i> against <b>SOUTH BROOKLYN RAILWAY COMPANY,</b>	ORDER No. 249. February 7, 1908.
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Under Order for Hearing No. 184, made January  
3, 1908.

This matter coming on upon the report of the hearing had herein on the 16th day of January, 1908, and on the 22nd day of January, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made on the 3rd day of January, 1908, and returnable on the 16th day of January, 1908, and that said order was duly served on the South Brooklyn Railway Company on the 3d day of January, 1908, said order being Order No. 184, and that the said hearing was held by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified, on the 16th day of January, 1908, and on the 22nd day of January, 1908, before Commissioner Bassett, presiding. Frank Bennett, complainant, appearing in person, and W. G. Menden, Esq., appearing for the said railway company, and proof having been taken upon said hearing, and it having been made to appear by the proceedings on said hearing that the regulations, equipment and service of said railway company, in respect to the transportation of persons upon its line on Gravesend avenue, in the borough of Brooklyn, city and State of New York, are unsafe, improper and inadequate on account of the matters in said complaint set forth and in said answer admitted, and on account of the matters proved upon the hearing herein, and that repairs, improvements, changes and additions to and in the stations used by said company in connection with the transportation of passengers on its said line on said Gravesend avenue, in the borough of Brooklyn, city and State of New York, ought reasonably to be made in order to secure, promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of said passengers,

**Now,** on motion of George S. Coleman, Esq., counsel to the commission,  
**It is ordered,** 1. That said South Brooklyn Railway Company be and it hereby  
 is directed and required to construct and maintain, at its Kensington station on  
 said Gravesend avenue, on each side of said company's double track line at said  
 station, a cinder platform at least two hundred (200) feet in length and of sufficient  
 height and width to enable passengers to board and alight from trains at said  
 station with convenience and safety. Further, that said company bind and enclose  
 the exterior of each of said platforms next to the street for at least one hundred  
 and twenty (120) feet with heavy retaining timbers laid in such a manner as to  
 form steps from the present grade of the street to the tops of said platforms for  
 the convenience of passengers in ascending to and descending from said platform.  
 Further, that said company keep and maintain the tops of said cinder platforms on  
 a level with the tops of said timbers.

2. That said South Brooklyn Railway Company, be and it hereby is directed and  
 required to construct and maintain at the Eighteenth avenue station on said line  
 on said Gravesend avenue, on each side of said company's double track line, at said  
 station, a cinder platform at least two hundred (200) feet in length and of sufficient  
 width and height to enable passengers to board and alight from trains of said  
 station with convenience and safety. Further, that said company bind and enclose  
 the exterior of each of said platforms next to the street for at least one hundred  
 and twenty (120) feet with heavy retaining timbers, and that said company keep  
 and maintain the tops of said cinder platforms on a level with the tops of said  
 timbers.

3. That said South Brooklyn Railway Company be, and it hereby is directed and  
 required to construct and maintain at its Parkville station on said line, on each  
 side of said company's double track line, at said station, a cinder platform at least  
 two hundred (200) feet in length and of sufficient width and height above the  
 present grade of the street to enable passengers to board trains at said station, and  
 to alight therefrom in safety.

4. That said company shall keep and maintain said platforms in as good condition  
 as when first constructed in accordance with the requirements of this order.

5. **It is further ordered,** That said South Brooklyn Railway Company be and it  
 hereby is directed and required to construct said platforms, and to bind and enclose  
 the same in the manner hereinbefore directed within thirty days from the date of  
 the service on said company of a certified copy of this order, and continue the same  
 in that condition until such time as the Public Service Commission for the First  
 District shall otherwise order.

6. **It is further ordered,** That said South Brooklyn Railway Company notify the  
 Public Service Commission for the First District within five days after service of  
 this order upon it whether the terms of this order are accepted and will be obeyed.

## PAVING.

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**Brooklyn City Railroad Company, Brooklyn Heights Railroad  
 Company, Nassau Electric Railroad Company.**—Neglect to  
 pave and keep in repair the street between and adjoining  
 rails.

Hearing Order No. 190.  
 Letter of Chairman Wilcox.  
 Opinion of Commissioner Bassett.  
 Final Order No. 318.  
 Extension Order No. 339.  
 Extension Order No. 357.  
 Final Order No. 389.  
 Extension Order No. 440.

COMPLAINT OF BIRD S. COLER, President of the  
 Borough of Brooklyn,  
 against

BROOKLYN CITY RAILROAD COMPANY, BROOK-  
 LYNN HEIGHTS RAILROAD COMPANY AND  
 NASSAU ELECTRIC RAILROAD COMPANY.

Hearing Order No. 190 (see form, note 3), issued January 6th.  
 Hearings were held January 21st, 28th, and February 4th.

of the two platforms, extending about eighty-five feet. It is about four feet from the top of the platform to the roadway on each side and there is a tendency for the ashes to work down and narrow the width of the top of the platform where it is not bound by timbers. It is in my opinion necessary and desirable that timbers should be placed on the outer side of both platforms to a total distance of at least 120 feet, which is the distance between platforms of a five-car train. This would cause an additional timbering of about thirty-five feet on each platform. As it is no more difficult to place the timbers so that they make steps they should be arranged in this manner. The part of the platform between the timbers should be maintained level with the tops of the timbers as trains do not always stop at the same part of the platform. The entire top of the platform whether timbered or not should be maintained at the same width as the timbered portion and with the level surface.

At the Eighteenth avenue station the platforms are similarly constructed of earth and soft coal cinders. There is a timber along the inside edge of each platform but nothing along the outside edge to hold the surface in place. The top of these platforms is about eighteen inches above the street level. Although they now appear to be in fair condition, it will, in my opinion, be only a few months before the outside edge of the cinder platform is worn away, thus lessening the width of the level top and again producing the dangerous condition that has been complained of. On this account an outside retaining timber should be placed for at least 120 feet on the outside edge of each platform.

At the Parkville station the track level and street level correspond fairly closely, and the platforms do not stand high above the street. Parts of the platforms, however, now present a narrower top than 3½ feet. The entire platform on each side of the tracks should be made at least 3½ feet wide.

The order should direct that the platforms be maintained in as good condition as is now directed. Thirty days will in my opinion be a sufficient time for the company to comply.

Thereupon the following final order was issued:

In the Matter of <b>FRANK BENNETT,</b> <i>Complainant,</i> against <b>SOUTH BROOKLYN RAILWAY COMPANY,</b> <hr/> Under Order for Hearing No. 184, made January 3, 1908.	ORDER No. 249. February 7, 1908.
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This matter coming on upon the report of the hearing had herein on the 16th day of January, 1908, and on the 22nd day of January, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made on the 3rd day of January, 1908, and returnable on the 16th day of January, 1908, and that said order was duly served on the South Brooklyn Railway Company on the 3d day of January, 1908, said order being Order No. 184, and that the said hearing was held by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified, on the 16th day of January, 1908, and on the 22nd day of January, 1908, before Commissioner Bassett, presiding. Frank Bennett, complainant, appearing in person, and W. G. Menden, Esq., appearing for the said railway company, and proof having been taken upon said hearing, and it having been made to appear by the proceedings on said hearing that the regulations, equipment and service of said railway company, in respect to the transportation of persons upon its line on Gravesend avenue, in the borough of Brooklyn, city and State of New York, are unsafe, improper and inadequate on account of the matters in said complaint set forth and in said answer admitted, and on account of the matters proved upon the hearing herein, and that repairs, improvements, changes and additions to and in the stations used by said company in connection with the transportation of passengers on its said line on said Gravesend avenue, in the borough of Brooklyn, city and State of New York, ought reasonably to be made in order to secure, promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of said passengers.

**Now**, on motion of George S. Coleman, Esq., counsel to the commission,  
*It is ordered*, 1. That said South Brooklyn Railway Company be and it hereby  
 is directed and required to construct and maintain, at its Kensington station on  
 said Gravesend avenue, on each side of said company's double track line at said  
 station, a cinder platform at least two hundred (200) feet in length and of sufficient  
 height and width to enable passengers to board and alight from trains at said  
 station with convenience and safety. Further, that said company bind and enclose  
 the exterior of each of said platforms next to the street for at least one hundred  
 and twenty (120) feet with heavy retaining timbers laid in such a manner as to  
 form steps from the present grade of the street to the tops of said platforms for  
 the convenience of passengers in ascending to and descending from said platform.  
 Further, that said company keep and maintain the tops of said cinder platforms on  
 a level with the tops of said timbers.

2. That said South Brooklyn Railway Company, be and it hereby is directed and  
 required to construct and maintain at the Eighteenth avenue station on said line on  
 said Gravesend avenue, on each side of said company's double track line, at said  
 station, a cinder platform at least two hundred (200) feet in length and of sufficient  
 width and height to enable passengers to board and alight from trains of said  
 station with convenience and safety. Further, that said company bind and enclose  
 the exterior of each of said platforms next to the street for at least one hundred  
 and twenty (120) feet with heavy retaining timbers, and that said company keep  
 and maintain the tops of said cinder platforms on a level with the tops of said  
 timbers.

3. That said South Brooklyn Railway Company be, and it hereby is directed and  
 required to construct and maintain at its Parkville station on said line, on each  
 side of said company's double track line, at said station, a cinder platform at least  
 two hundred (200) feet in length and of sufficient width and height above the  
 present grade of the street to enable passengers to board trains at said station, and  
 to alight therefrom in safety.

4. That said company shall keep and maintain said platforms in as good condition  
 as when first constructed in accordance with the requirements of this order.

5. *It is further ordered*, That said South Brooklyn Railway Company be and it  
 hereby is directed and required to construct said platforms, and to bind and enclose  
 the same in the manner hereinbefore directed within thirty days from the date of  
 the service on said company of a certified copy of this order, and continue the same  
 in that condition until such time as the Public Service Commission for the First  
 District shall otherwise order.

6. *It is further ordered*, That said South Brooklyn Railway Company notify the  
 Public Service Commission for the First District within five days after service of  
 this order upon it whether the terms of this order are accepted and will be obeyed.

## PAVING.

**Brooklyn City Railroad Company, Brooklyn Heights Railroad  
 Company, Nassau Electric Railroad Company.—Neglect to  
 pave and keep in repair the street between and adjoining  
 rails.**

Hearing Order No. 190.  
 Letter of Chairman Wilcox.  
 Opinion of Commissioner Bassett.  
 Final Order No. 318.  
 Extension Order No. 339.  
 Extension Order No. 357.  
 Final Order No. 389.  
 Extension Order No. 440.

**COMPLAINT OF BIRD S. COLE, President of the  
 Borough of Brooklyn,  
 against**

**BROOKLYN CITY RAILROAD COMPANY, BROOK-  
 LYN HEIGHTS RAILROAD COMPANY AND  
 NASSAU ELECTRIC RAILROAD COMPANY.**

Hearing Order No. 190 (see form, note 3), issued January 6th.  
 Hearings were held January 21st, 28th, and February 4th.

\*[The commission should not make an order requiring street railroad corporations to repair their portion of streets until the borough president has exercised his authority by requiring repairs to be made in such manner as he may prescribe.]

The Board of Aldermen adopted a resolution requesting the Commission to notify certain street railroad corporations to make repairs. The chairman made the following reply thereto:

## LETTER OF CHAIRMAN WILLCOX.

May 18, 1908.

*To the Honorable the Board of Aldermen of The City of New York:*

SIRS.—The Public Service Commission for the First District is in receipt of a copy of the following resolution adopted by your honorable body on April 28, 1908:

"Whereas, The condition of the streets between and surrounding the tracks on Water street, from Fulton street to Washington street, borough of Brooklyn, and also Front street, from Fulton street to Adams street, borough of Brooklyn, and which are dangerous for vehicles to travel through;

Whereas, The railroad companies have long neglected making repairs on these streets, as required by law, be it

Resolved, That the Board of Aldermen do hereby request the Public Service Commission to notify the railroad companies operating on above named streets that said railroad companies be instructed to make the necessary repairs immediately between the tracks, as required by law."

The Commission is advised by counsel that upon the facts stated in the resolution and under section 98 of the Railroad Law and sections 45 and 383 of the Greater New York Charter, the duty of requiring these street railroad corporations to repair that portion of the streets used by them between their tracks, the rails of their tracks and two feet in width outside of their tracks, rests with the president of the borough of Brooklyn, and that it would be better to withhold any order of the Commission until the president of the borough of Brooklyn has exercised his authority by requiring the repairs to be made in such manner as he may prescribe. If the companies fail to comply, the Commission may then take necessary action.

Section 98 of the Railroad Law referred to above provides as follows:

"Every street surface railroad corporation so long as it shall continue to use any of its tracks in any street \* \* \* shall have and keep in permanent repair that portion of such street \* \* \* between its tracks, the rails of its tracks, and two feet in width outside of its tracks, *under the supervision of the proper local authorities*, and whenever required by them to do so, and in such manner as they may prescribe."

Section 383 of the Greater New York Charter provides that the borough president is the proper local authority referred to in said section 98 of the Railroad Law.

Very truly yours,  
(Signed) WM. R. WILLCOX.  
Chairman.

\*[A street railroad corporation will be required to perform its obligations under section 98 of the Railroad Law to keep in repair that portion of the street between the tracks and two feet in width outside thereof.

But a railroad company should not be required to repave where the rest of the street is in poor condition until the city will repave its area.]

## OPINION OF COMMISSION.

(Adopted March 6, 1908.)

COMMISSIONER BASSETT:—

In the month of March, 1907, the defendant companies were requested by the borough authorities of the borough of Brooklyn to repair the pavement on certain streets in said borough, but said companies failed to comply with said request, or complied therewith only in part, whereupon, in the month of October, 1907, the borough authorities made and served what they call a "peremptory notice" requiring the defendants to repair the pavement on a portion of said streets within thirty days thereafter as provided by section 98 of the Railroad Law. The defendant companies having failed to make the repairs mentioned within the

\* See foot note, page 9.

time prescribed, complaints were filed with this Commission by Bird S. Coler, president of the borough of Brooklyn, setting forth the facts and asking the Commission for relief. Copies of these complaints were transmitted to the defendants, accompanied by the usual complaint orders requiring the defendants concerned to satisfy the matters complained of or to make answer within ten days thereafter. The defendants filed various answers with the Commission, and upon the complaints and these answers orders No. 189, No. 190 and No. 191 were issued on January 6, 1908, returnable on January 21, 1908, which brought on the hearing herein. As all these orders were returnable at the same time, all three cases were consolidated and tried together. The hearing was had on January 21, 1908, and, by adjournments duly had, on January 28, 1908, and February 4, 1908.

Order No. 189 has reference to Farragut road between Ocean avenue and East Twenty-sixth street.

Order No. 190 has reference to Vanderbilt avenue, between Park avenue and Myrtle avenue; Nassau avenue between Diamond street and Morgan avenue; Franklin street, between Kent avenue and Commercial street; Manhattan avenue, between Driggs avenue and Newtown creek, and Driggs avenue between South Fourth street and South Twelfth street.

Order No. 191 has reference to Marcy avenue, between Flushing avenue and Middleton street.

Section 98 of the Railroad Law so far as applicable to paving, is as follows:

"Every street surface railroad corporation so long as it shall continue to use any of its tracks in any street, avenue or public place in any city or village shall have and keep in permanent repair that portion of such street, avenue, or public place between its tracks, the rails of its tracks, and two feet in width outside of its tracks, under the supervision of the proper local authorities, and whenever required by them to do so, and in such manner as they may prescribe. In case of the neglect of any corporation to make pavements or repairs after the expiration of thirty days' notice to do so the local authorities may make the same at the expense of such corporation."

The borough authorities have not proceeded to make repairs in these streets at the expense of the defendant companies as authorized by this section, but seek the aid of the Commission in the matter. If the complaints had been made by parties other than the borough authorities the Commission might hesitate to interfere and might be inclined to leave the matter to be settled between the borough authorities and the railroad companies, but when the borough authorities are themselves the one to make the complaint, I regard it as proper for the Commission to take such action as the circumstances warrant.

The charters and franchises of some of the defendant companies contain certain provisions as to paving which are not the same as those contained in section 98 of the Railroad Law above quoted, but in my opinion all charter or franchise provisions in this regard, are superseded by the provisions of the section mentioned, and the paving obligations of all of said companies are fixed and determined by the provisions of that section.

Under section 98 of the Railroad Law the area which a street surface railroad company is required to keep in repair consists of that portion of the street between the tracks, the rails of the tracks, and two feet in width outside thereof. The remainder of the street is to be kept in repair by the municipality. For convenience the area required to be maintained by the railroad company will be designated as the "railroad company's portion" and the remainder of each street will be designated as the "city's portion." The condition of the pavement in the various streets mentioned and between the points mentioned is shown by the evidence to be as follows:

1. Farragut road, between Ocean avenue and East Twenty-sixth street.

On this street the railroad company's portion of the pavement consists of granite block, and the city's portion consists of macadam. The condition of the city's portion of the pavement is good, but the railroad company's portion is poor, owing to a regular series of depressions formed by the settlement of the granite blocks between ties, the blocks being laid on sand foundation and settling between the ties. This condition could be remedied by laying those granite blocks on a con-

crete foundation, and an order should issue that this be done. At Mansfield Place and at Elmore Place and at other points the tracks and the pavement in and between the tracks are depressed to such an extent as to cause water to pond between and adjacent to the tracks and to cause the tops of manholes to project above the surface of the pavement, and the order should provide that at all points the tracks and the pavement in and between and adjacent to the same should be made to conform to the grade of the street in such manner as to prevent the ponding of water and permit proper drainage to the catch-basins on the sides of the street.

2. Vanderbilt avenue, between Park avenue and Myrtle avenue.

In this avenue the city's portion is paved with granite blocks in excellent condition. The railroad company's area is paved with cobbles which are of various sizes and which have settled irregularly below the tops of the rails. The condition of this area is decidedly inferior to that of the city owing to the use by the railroad company of cobbles instead of granite blocks and owing to the irregular settlement of the cobbles between the ties. The entire area of the railroad company should be repaved with granite blocks on a concrete foundation, in such manner as to cause the surface thereof to conform properly to the grade of the street, and an order to that effect should issue.

3. Nassau avenue, between Diamond street and Morgan avenue.

The pavement here is entirely of granite block. The condition of the pavement within the city's area is very good, but the railroad company's portion is in very poor condition owing to settlement of granite blocks between the ties. The entire area of the railroad company should be repaved with granite blocks on a concrete foundation. This is the only way suggested whereby the irregular settlement of the granite blocks can be prevented. An order should issue accordingly.

4. Franklin street, between Kent avenue and Commercial street.

The pavement on this street is granite block. The principal defect in the railroad company's area consists of a heavy ridging in the middle of the space between the inner rails of the double track road in this street, evidently caused by the constant pressure of heavy truck wheels along each side of said space, the granite blocks being laid on sand and yielding to the heavy pressure of the wheels. The remedy for the defect complained of is a repaving with granite on concrete, and an order should issue directing the railroad company's area to be repaved in that manner.

5. Manhattan avenue, between Driggs avenue and Newtown creek.

The pavement here is granite block. The city's portion of this pavement is in good condition. The defects in the railroad company's portion consist in part of deep ruts worn in the pavement next to the rails and on both the inner side and the outer side thereof, making the street dangerous for vehicular traffic. The pavement has also settled irregularly in places, and in some places has settled and loosened. In my opinion the railroad company's area should be repaved with granite on concrete in such manner as to do away with the ruts mentioned and to conform the entire surface of this area to the grade of the street.

6. Driggs avenue, between South Fourth street and South Twelfth street.

This avenue is paved entirely across with asphalt. The city's portion of this pavement is in good condition, while the railroad company's portion is badly out of repair by reason of holes in the asphalt and ruts worn along next to the rails. The condition of this area is particularly bad under the Williamsburg Bridge over this avenue. The order in this case should provide for the repair of the railroad company's portion of this pavement by the use of asphalt in such manner as to remove all holes and ruts in said pavement and render the surface of said pavement in proper and safe condition and in conformity to the grade of the street.

7. Marcy avenue, between Flushing avenue and Middleton street.

The evidence in this case shows that the portion of Marcy avenue complained of is paved throughout with small cobble, and that the portion thereof within the area maintained by the railroad company is no worse than the portion maintained by the city. It appears from the testimony taken that the railroad company is

willing to repave its area as soon as the city repaves the remainder of the street. In my opinion it would not be reasonable to require the railroad company to repave its area on this street until such time as the city shall repave its area. I am therefore of the opinion that the complaint in regard to this street should be dismissed.

Owing to the difficulty involved in making repairs and laying new pavements during the winter season it is my opinion that all orders issued in these matters directing pavements to be laid or repairs to be made should not require the work to be undertaken at once, but should require the same to be undertaken not later than the 1st day of April, 1908, and completed not later than the 1st day of May, 1908.

Let orders be prepared accordingly.

Thereupon the following final order was issued:

BIRD S. COLER, President, Borough of Brooklyn,  
*Complainant,*  
*against*

BROOKLYN CITY RAILROAD COMPANY, BROOKLYN HEIGHTS RAILROAD COMPANY and  
NASSAU ELECTRIC RAILROAD COMPANY,  
*Defendants.*

ORDER No. 318.  
March 6, 1908.

Under Order for Hearing No. 190, dated January 6, 1908.

This matter coming on upon the report of the hearing had herein on January 21, 1908, January 28, 1908, and February 4, 1908, and it appearing that the said hearing was held pursuant to Order No. 190 of this Commission, dated January 6, 1908, and returnable on the 21st day of January, 1908, and that said order was duly served on said Brooklyn City Railroad Company, Brooklyn Heights Railroad Company and Nassau Electric Railroad Company on the 7th day of January, 1908, and that the said hearing was held by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on January 21, 1908, and by adjournments duly had on January 28, 1908, and February 4, 1908, before Mr. Commissioner Bassett presiding, Harry M. Chamberlain, Esq., appearing for the Commission and George D. Yeomans, Esq., appearing for said railroad companies, and proof having been taken upon said hearing and it being made to appear upon said hearing that said Nassau Electric Railroad Company has violated the law in failing to keep in proper repair the pavement between its tracks, the rails of its tracks and two feet in width outside of its tracks on Vanderbilt avenue, between Park avenue and Myrtle avenue, in the borough of Brooklyn, city and State of New York, and that said area in said streets between the points named is in need of repairs and that it is reasonable that said company be required to repave said area with granite blocks laid on a concrete foundation; and it being made to appear upon the said hearing that said Brooklyn City Railroad Company and said Brooklyn Heights Railroad Company have violated the law in failing to keep in proper repair the pavement between the tracks, the rails of the tracks and two feet in width outside of the tracks of the lines owned by said Brooklyn City Railroad Company and operated by said Brooklyn Heights Railroad Company on Nassau avenue between Diamond street and Morgan avenue, on Franklin street between Kent avenue and Commercial street, on Manhattan avenue between Driggs avenue and Newtown creek and on Driggs avenue, between South Fourth street and South Twelfth street, all in the borough of Brooklyn, city and State of New York; and that said areas in said streets between the points named are in need of repairs and that it is reasonable that said companies be required to repave said areas on said Nassau avenue, Franklin street and Manhattan avenue, with granite blocks laid upon a concrete foundation; and that it is reasonable that said companies be required to repair the asphalt pavement on said area on said Driggs avenue by filling up all holes and ruts therein with asphalt so as to eliminate all such holes and ruts and to cause said pavement to present an even surface and to conform in all respects to the proper grade of the street.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,  
*It is ordered:*

1. That said Nassau Electric Railroad Company be and it hereby is directed and required to repave said Vanderbilt avenue between Park avenue and Myrtle avenue, between its tracks, the rails of its tracks and two feet in width outside of its tracks, with granite blocks laid upon a concrete foundation, in a proper and suitable manner and in such manner that the area so paved will properly conform to the grade of said street.

## 672 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

2. That said Brooklyn City Railroad Company and said Brooklyn Heights Railroad Company be and they hereby are directed and required to repave said Nassau avenue between Diamond street and Morgan avenue, said Franklin street between Kent avenue and Commericial street and said Manhattan avenue, between Driggs avenue and Newtown creek, between the tracks, the rails of the tracks and two feet in width outside of the tracks, of said lines of railroad on said streets with granite blocks laid upon a concrete foundation, in a proper and suitable manner and in such manner that each area so paved will properly conform to the grade of the street in which the pavement is laid.

3. That said Brooklyn City Railroad Company and said Brooklyn Heights Railroad Company be and they hereby are directed and required to make suitable and adequate repairs to the asphalt pavement between the tracks, the rails of the tracks and two feet in width outside of the tracks on said line of railroad on Driggs avenue between South Fourth and South Twelfth streets, in the borough of Brooklyn, city and State of New York, in such manner that all ruts and holes of every kind in said pavement shall be eliminated and that said pavement shall present an even surface and properly conform to the grade of the street.

4. It is further ordered, That said Nassau Electric Railroad Company, said Brooklyn City Railroad Company and said Brooklyn Heights Railroad Company begin the repairs above mentioned not later than the 1st day of April, 1908, and complete the same not later than the 1st day of May, 1908, and thereafter keep and maintain the said pavement in the same condition as when first completed. This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

5. It is further ordered, That said Brooklyn City Railroad Company, said Brooklyn Heights Railroad Company and said Nassau Electric Railroad Company notify the Public Service Commission for the First District within five (5) days after the service of this order whether the terms of this order are accepted and will be obeyed.

Upon applications of the companies, extension orders No. 339 and No. 357 were issued:

### EXTENSION ORDER No. 339.

March 13, 1908.

An order, No. 318, having been made herein on or about the 6th day of March, 1908, ordering and directing the Brooklyn City Railroad Company, the Brooklyn Heights Railroad Company and the Nassau Electric Railroad Company, to inform the Public Service Commission for the First District, within five (5) days after service of said order, whether the terms are accepted and will be obeyed, and the said Nassau Electric Railroad Company having, on the 11th day of March, applied in writing for an extension of such time,

Ordered, That the time within which the Brooklyn City Railroad Company, the Brooklyn Heights Railroad Company, and the Nassau Electric Railroad Company, shall make answer to said Order No. 318 be, and the same hereby is, extended to and including the 17th day of March, 1908.

### EXTENSION ORDER No. 357.

March 20, 1908.

An order, No. 318, having been made herein on or about the 6th day of March, 1908, ordering and directing the Brooklyn City Railroad Company, Brooklyn Heights Railroad Company and the Nassau Electric Railroad Company, to inform the Public Service Commission for the First District, within five (5) days after service of said order, whether the terms are accepted and will be obeyed; and said time having been extended to and including the 17th day of March, 1908, by the terms of Order No. 339, entered on March 13th; and the said Nassau Electric Railroad Company and the Brooklyn Heights Railroad Company having, on March 17, 1908, applied in writing for a further extension of such time,

Now, on motion made and duly seconded, it is

Ordered, That the time within which the Nassau Electric Railroad Company, Brooklyn Heights Railroad, Brooklyn City Railroad Company, shall make answer to said Order No. 318 be, and the same hereby is, extended to and including the 24th day of March, 1908.

### FINAL ORDER No. 389.

March 31, 1908.

This matter coming on upon the report of the rehearing had herein on the 24th day of March, 1908, and it appearing that said hearing was had by and before the Commission on said date before Mr. Commissioner Bassett presiding, Edward D. Candee, Esq., appearing for the complainant and George D. Yeomans, Esq., appearing for the defendants, Brooklyn City Railroad Company, Brooklyn Heights Railroad Company and Nassau Electric Railroad Company.

Now, after the proceedings upon said rehearing and after consideration of the facts, including those arising since the making of Final Order No. 318, and upon the stipulation of the said parties, the Commission, being of the opinion that said

**Final Order No. 318**, directing repairs to the pavement on Vanderbilt avenue between Park avenue and Myrtle avenue, on Nassau avenue between Diamond street and Morgan avenue, on Franklin street between Kent avenue and Commercial street, on Manhattan avenue, Driggs avenue and Newtown creek and on Driggs avenue between South Fourth street and South Twelfth street, all in the borough of Brooklyn, city and State of New York, should be changed and modified in certain particulars,

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,  
*It is ordered*, That said Final Order No. 318, issued March 16, 1908, be and the same hereby is changed and modified so as to read as follows:

**ORDER No. 318.**

This matter coming on upon the report of the hearing had herein on January 21, 1908, January 28, 1908, and February 4, 1908; and it appearing that the said hearing was held pursuant to Order No. 190 of this Commission, dated January 6, 1908, and returnable on the 21st day of January, 1908, and that said order was duly served on said Brooklyn City Railroad Company, Brooklyn Heights Railroad Company and Nassau Electric Railroad Company on the 7th day of January, 1908, and that the said hearing was held by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on January 21, 1908, and by adjournment duly had on January 28, 1908, and February 4, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., appearing for the Commission and George D. Yeomans, Esq., appearing for said railroad companies; and proof having been taken upon said hearing and it being made to appear upon said hearing that said Nassau Electric Railroad Company has violated the law in failing to keep in proper repair the pavement between its tracks, the rails of its tracks and two feet in width outside of its tracks on Vanderbilt avenue between Park avenue and Myrtle avenue, in the borough of Brooklyn, city and State of New York, and that said areas in said streets between the points named is in need of repairs and that it is reasonable that said company be required to repave said area; and it being made to appear upon the said hearing that said The Brooklyn City Railroad Company and said The Brooklyn Heights Railroad Company violated the law in failing to keep in proper repair the pavement between the tracks, the rails of the track and two feet in width outside of the tracks of the lines owned by said The Brooklyn City Railroad Company and operated by said The Brooklyn Heights Railroad Company on Nassau avenue between Diamond street and Morgan avenue, on Franklin street between Kent avenue and Commercial street, on Manhattan avenue between Driggs avenue and Newtown creek and on Driggs avenue between South Fourth street and South Twelfth street, all in the borough of Brooklyn, city and State of New York; and that said areas in said streets between the points named are in need of repairs and that it is reasonable that said companies be required to repave said areas on said Nassau avenue, Franklin street and Manhattan avenue, and that it is reasonable that said companies be required to repair the asphalt pavement on said area on Driggs avenue by filling up all holes and ruts therein with asphalt so as to eliminate all such holes and ruts and to cause said pavement to present an even surface and to conform in all respects to the proper grade of the street.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,  
*It is ordered*: (1) That said The Nassau Electric Railroad Company be and it hereby is directed and required to repave said Vanderbilt avenue between Park avenue and Myrtle avenue, under the supervision of the President of the Borough of Brooklyn and in such manner as he may prescribe.

(2) That said The Brooklyn City Railroad Company and said The Brooklyn Heights Railroad Company be and they hereby are directed and required to repave said Nassau avenue between Diamond street and Morgan avenue, said Franklin street between Kent avenue and Commercial street, and said Manhattan avenue between Driggs avenue and Newtown creek, under the supervision of the President of the borough of Brooklyn and in such manner as he may prescribe.

(3) That said The Brooklyn City Railroad Company and said The Brooklyn Heights Railroad Company be and they hereby are directed and required to make suitable and adequate repairs to the asphalt pavement on Driggs avenue between South Fourth and South Twelfth streets, in the borough of Brooklyn, city and State of New York, under the supervision of the President of the borough of Brooklyn, and in such manner as he may prescribe.

(4) *It is further ordered*, That said The Nassau Electric Railroad Company, said The Brooklyn City Railroad Company and said The Brooklyn Heights Railroad Company begin the repairs above mentioned not later than the 1st day of April, 1908, and complete the same not later than the 1st day of May, 1908, and thereafter keep and maintain said pavement in the same condition as when first completed. This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

(5) *It is further ordered*, That said Brooklyn City Railroad Company, said Brooklyn Heights Railroad Company and said Nassau Electric Railroad Company notify the Public Service Commission for the First District within five (5) days after the service of this order whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

## EXTENSION ORDER No. 440.

April 28, 1908.

An order, No. 389, having been made herein on or about the 31st day of March, 1908, ordering and directing the Brooklyn City Railroad Company, the Brooklyn Heights Railroad Company and the Nassau Electric Railroad Company to repave Vanderbilt avenue between Park and Myrtle avenues, and Nassau avenue between Diamond street and Morgan avenue, and Franklin street between Kent avenue and Commercial street, and Manhattan avenue between Driggs avenue and Newtown creek, and Driggs avenue between South Fourth and South Twelfth streets, in the borough of Brooklyn, city and State of New York, on or before the 1st day of May, 1908; and the said Brooklyn Heights Railroad Company and the Nassau Electric Railroad Company having, on the 22d day of April, 1908, applied in writing for an extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Brooklyn City Railroad Company, Brooklyn Heights Railroad Company and Nassau Electric Railroad Company shall make the repairs above mentioned be, and the same hereby is, extended to and including the first day of June, 1908.

**Nassau Electric Railroad Company, Brooklyn, Queens County  
and Suburban Railroad Company.—Repair of pavement on  
Marcy avenue.**

Hearing Order No. 191.

Letter of Chairman Willcox.

Opinion of Commissioner Bassett.

Dismissal Order No. 317.

COMPLAINT OF BIRD S. COLER, President of the  
Borough of Brooklyn,

against

NASSAU ELECTRIC RAILROAD COMPANY and  
BROOKLYN, QUEENS COUNTY and SUBURBAN  
RAILROAD COMPANY.

Hearing Order No. 191 (see form, note 3), issued January 6th.

Hearings were held January 21st, 28th, and February 4th.

See letter of Chairman Willcox and opinion of Commissioner Bassett in preceding case upon which the following dismissal order was issued:

BIRD S. COLER, President, Borough of Brooklyn,  
*Complainant*,  
against

NASSAU ELECTRIC RAILROAD COMPANY,  
and BROOKLYN, QUEENS COUNTY AND SUB-  
URBAN RAILROAD COMPANY, . . .  
*Defendants.*

ORDER No. 317.  
March 6, 1908.

Under Order for Hearing No. 191, dated January  
6, 1908.

This matter coming on upon the report of the hearing had herein on January 21, 1908, January 28, 1908, and February 4, 1908; and it appearing that said hearing was held pursuant to Order No. 191 of this Commission, dated January 6, 1908, and returnable on the 21st day of January, 1908, and that said order was duly served upon said Nassau Electric Railroad Company and said Brooklyn, Queens County and Suburban Railroad Company on January 7, 1908, and that said hearing was held by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on January 21, 1908, and by adjournments duly had on January 28, 1908, and February 4, 1908, before Mr. Commissioner Bassett presiding, Harry M. Chamberlain, Esq., appearing for the

Commission and George D. Yeomans, Esq., appearing for the railroad companies; and proof having been taken upon said hearing and it being made to appear by the proceedings on said hearing that the complainant herein seeks to compel the defendants to repave the area between the tracks, the rails of the tracks and two feet in width outside of the tracks of the street railroad lines on Marcy avenue, between Flushing avenue and Middleton street, in the borough of Brooklyn, city and State of New York, with granite blocks laid upon a concrete foundation; and it being made to appear by said proceedings that said street being the terminal above mentioned is paved entirely across with cobbles and that the portion thereof about which complaint is made is substantially in no worse condition than the portion thereof outside of said area maintained by the municipality, and that the municipality gives no assurances as to when said portion maintained by it will be repaved; and that it would not be reasonable under these circumstances to require the defendants to repave at this time the area complained of with a better quality of material than that used by the municipality.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered.* That this proceeding be and the same hereby is dismissed and that this order be filed in the office of the Commission.

**Nassau Electric Railroad Company.—Repair of pavement and grading of tracks on Farragut road.**

Hearing Order No. 189.

Letter of Chairman Wilcox.

Opinion of Commissioner Bassett.

Final Order No. 316.

Extension Order No. 338.

Extension Order No. 356.

Final Order No. 388.

Extension Order No. 439.

**COMPLAINT OF BIRD S. COLER, President of the  
Borough of Brooklyn,**

*against*

**NASSAU ELECTRIC RAILROAD COMPANY.**

Hearing Order No. 189 (see form, note 3), issued January 6th.

Hearings were held January 21st, 28th, and February 4th.

See letter of Chairman Wilcox and the opinion of Commissioner Bassett in the next preceding case but one, upon which the following final order was issued:

BIRD S. COLER, President, Borough of Brooklyn,  
*Complainant,*  
*against*

NASSAU ELECTRIC RAILROAD COMPANY,  
*Defendant.*

ORDER No. 316.

March 6, 1908.

Under Order for Hearing No. 189, dated January  
6, 1908.

This matter coming on upon the report of the hearing had herein on January 21, 1908, January 28, 1908, and February 4, 1908; and it appearing that the said hearing was held pursuant to Order No. 189 of this Commission, dated January 6, 1908, and returnable on the 21st day of January, 1908, and that the said order was duly served upon said Nassau Electric Railroad Company on January 7, 1908, and that the said hearing was held by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on January 21, 1908, and by adjournment duly had on January 28, 1908, and February 4, 1908, before Mr. Commissioner Bassett, presiding, Harry M. Chamberlain, Esq., appearing for the Commission, and George D. Yeomans, Esq., appearing for said railroad company; and proof having been taken upon said hearing and it being made to appear by the proceedings on said hearing that the said defendant has violated the law in failing to keep in proper repair the pavement between its tracks, the rails of its tracks and two feet in width outside of its tracks on Farragut road or Avenue F, between East Twenty-sixth street and Ocean avenue, in

**676 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.**

the borough of Brooklyn, city and State of New York, and that said area in said streets between the points named is in need of repairs, and that it is reasonable that the said company be required to repave said area with granite blocks laid upon a concrete foundation,

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered:* (1) That said Nassau Electric Railroad Company be and it hereby is directed and required to repave said Farragut road or Avenue F, between East Twenty-sixth street and Ocean avenue, between its tracks and the rails of its tracks and two feet in width outside of its tracks, with granite blocks laid upon a concrete foundation, in a proper and suitable manner and in such manner that the area so paved will properly conform to the grade of the street.

(2) *It is further ordered*, That the railroad tracks of said company laid in said street, wherever below the proper grade of said street be raised to the proper grade in such manner as to prevent the ponding of water and to permit proper drainage to the catch basins.

(3) *It is further ordered*, That said Nassau Electric Railroad Company begin the repairs above mentioned not later than the 1st day of April, 1908, and complete the same not later than the 1st day of May, 1908, and thereafter keep and maintain said pavement in as good condition as when first completed. This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

(4) *It is further ordered*, That said Nassau Electric Railroad Company notify the Public Service Commission for the First District, within five (5) days after the service of this order, whether the terms of this order are accepted and will be obeyed.

Upon applications of the company extension orders No. 338 and No. 356 were issued:

**EXTENSION ORDER No. 338.**

March 13, 1908.

An order, No. 316, having been made herein on or about the 6th day of March, 1908, ordering and directing the Nassau Electric Railroad Company to inform the Public Service Commission for the First District, within five (5) days after service of said order, whether the terms are accepted and will be obeyed; and the said Nassau Electric Railroad Company having, on the 11th day of March, applied in writing for an extension of such time,

Now, on motion made and duly seconded,

*It is ordered*, That the time within which the Nassau Electric Railroad Company shall make answer to said Order No. 316 be, and the same hereby is, extended to and including the 17th day of March, 1908.

**EXTENSION ORDER No. 356.**

March 20, 1908.

An order, No. 316, having been made herein on or about the 6th day of March, 1908, ordering and directing the Nassau Electric Railroad Company to inform the Public Service Commission for the First District, within five (5) days after service of said order, whether the terms are accepted and will be obeyed, and said time having been extended to and including the 17th day of March, 1908, by the terms of Order No. 338, entered on March 13th; and the said Nassau Electric Railroad Company having, on March 17, 1908, applied in writing for a further extension of such time,

Now, on motion made and duly seconded, it is

*Ordered*, That the time within which the Nassau Electric Railroad Company shall make answer to said Order No. 316 be, and the same hereby is, extended to and including the 24th day of March, 1908.

The company moved for a resettlement of Order No. 316 on which motion a hearing was held March 24th; the following final order was issued:

**FINAL ORDER No. 388.**

March 31, 1908.

This matter coming on upon the report of the rehearing had herein on the 24th day of March, 1908, and it appearing that said rehearing was had by and before the Commission on said date, before Commissioner Bassett presiding, Edward D. Candee, Esq., appearing for the complainant and George D. Yeomans, Esq., appearing for the Nassau Electric Railroad Company,

Now, after the proceedings upon said rehearing and after consideration of the facts, including those arising since the making of Order No. 316, and upon the stipulation of the said parties, the Commission being of the opinion that said Order No. 316 which directed repairs to the paving on Farragut road or Avenue F, between East Twenty-sixth street and Ocean avenue, in the borough of Brooklyn, city and State of New York, should be changed and modified in certain particulars,

## ORDERS OF THE COMMISSION ISSUED IN 1908. 677

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,  
*It is ordered.* That order No. 316, issued March 6, 1908, be, and the same hereby  
is changed and modified so as to read as follows:

### ORDER No. 316.

This matter coming upon the report of the hearing had herein on January 21, 1908, January 28 and February 4, 1908, and it appearing that the said hearing was held pursuant to Order No. 189 of this Commission, dated January 6, 1908, and returnable on the 21st day of January, 1908, and that the said order was duly served upon said Nassau Electric Railroad Company on January 7th, 1908, and that the said hearing was held by and before the Commission on the matters embraced in the complaint and answer herein and in said order specified on January 21, 1908, and by adjournment duly had on January 28, 1908, and February 4, 1908, before Mr. Bassett presiding, Harry M. Chamberlain, Esq., appearing for the Commission, and George D. Yeomans, appearing for said railroad company, and proof having been taken upon said hearing and it being made to appear by the proceedings on said hearing that the said defendant had violated the law in failing to keep in proper repair the pavement between its tracks, the rails of its tracks and two feet in width outside of its tracks on Farragut road or Avenue F, between East Twenty-sixth street and Ocean avenue, in the borough of Brooklyn, city and State of New York, and that said area in said streets between the points named in need of repairs, and that it is reasonable that the said company be required to repave said area.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered:* (1) That said Nassau Electric Railroad Company be and it hereby is directed and required to repave said Farragut road or Avenue F between East Twenty-sixth street and Ocean avenue, under the supervision of the president of the borough of Brooklyn, and in such manner as he may prescribe.

(2) *It is further ordered.* That said Nassau Electric Railroad Company begin the repairs above mentioned not later than the first day of April, 1908, and complete the same not later than the first day of May, 1908, and thereafter keep and maintain said pavement in as good condition as when first completed. This order shall continue in force until such time as the Public Service Commission for the First District shall otherwise order.

(3) *It is further ordered.* That said Nassau Electric Railroad Company notify the Public Service Commission for the First District within five (5) days after service of this order whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

### EXTENSION ORDER No. 439.

April 28, 1908.

An order, No. 388, having been made herein on or about the 31st day of March, 1908, ordering and directing the Nassau Electric Railroad Company to repave Farragut road between East Twenty-sixth street and Ocean avenue on or before the 1st day of May, 1908, and the said Nassau Electric Railroad Company having, on the 22nd day of April, 1908, applied in writing for an extension of such time, Now, on motion made and duly seconded, it is

*Ordered.* That the time within which the Nassau Electric Railroad Company shall make the repairs above mentioned be, and the same hereby is, extended to and including the first day of June, 1908.

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### Hudson and Manhattan Railroad Company.—Restoration of pavement on Sixth avenue between 14th and 23d streets.

Complaint Order No. 705.  
Hearing Order No. 720.  
Opinion of Com'r Maltbie.  
Discontinuance Order No. 749.

### COMPLAINT OF RETAIL DRY GOODS ASSOCIATION

*against*

### HUDSON AND MANHATTAN RAILROAD COMPANY.

Complaint Order No. 705 (see form, note 1), issued August 28th.

Hearing Order No. 720 (see form, note 3), issued September 11th.

Hearings held September 19th and 21st.

## OPINION OF COMMISSION.

(Adopted September 29, 1908.)

## COMMISSIONER MALTIEB:—

This is a complaint made by the Retail Dry Goods Association against the Hudson and Manhattan Railroad Company. The association demanded that the Commission should issue an order against the Hudson and Manhattan Railroad Company for the repaving of Sixth avenue with asphalt between Fourteenth street and Twenty-third street.

After reply was made to the complaint, a hearing was fixed, at which the complainant started to present testimony to show that the repaving could be done immediately; but while the hearings were going on an arrangement was made between the complainant and the defendant whereby an order was issued by the Borough President against the Hudson and Manhattan Railroad Company, directing and authorizing this company to repave the street. The company had stated sometime previously that if such an order were issued so that it would be exempted from any responsibility therefor, it would repave immediately. This order having been issued and the work begun, the complainant asked that the complaint be dismissed.

I move that a discontinuance order be issued.

Thereupon the following discontinuance order was issued:

RETAIL DRY GOODS ASSOCIATION, <i>Complainant,</i> <i>against</i> HUDSON AND MANHATTAN RAILROAD COMPANY. <i>Defendant.</i>	DISCONTINUANCE ORDER No. 749. September 29, 1908.
"Restoration of Sixth avenue between Fourteenth and Twenty-third streets to original condition."	

This matter coming on upon a report of the hearing had herein upon the 19th day of September, 1908, and it appearing that said hearing was held under and pursuant to Order No. 720 of this Commission, dated September 11, 1908, and returnable on the 19th day of September, 1908, for the purpose of bringing on for hearing certain matters contained in the complaint of the Retail Dry Goods Association with respect to the unrestored condition of Sixth avenue between Fourteenth and Twenty-third streets, and it appearing that said hearing was had by and before the Commission on matters embraced in said complaint and in said order specified, on the 19th day of September, and, by adjournment, on the 21st day of September, 1908, Mr. Commissioner Maltbie presiding, Mr. LeRoy T. Harkness, Assistant Counsel, appearing for the Commission; Mr. B. G. Pascus appearing for the Retail Dry Goods Association, and Julius F. Workum, Esq., of counsel, appearing for the railroad company, and

It appearing, after said hearing, that the matters complained of in the complaint above mentioned have been satisfied to the satisfaction of the complainants herein,

Now, on motion made and duly seconded, it is,  
*Resolved*, That the proceedings herein be, and the same hereby are, discontinued  
 And it is further

*Resolved*, That this action of the Commission shall be without prejudice to the issuance of an order for further or additional hearings or action thereon by the Commission in respect to any of the matters covered by said complaint or said order for hearing or the proceedings thereon.

## HIGH TENSION SYSTEMS.

## Long Island Railroad Company — High tension wires.

\* [Communication from Commissioner of Water Supply, Gas and Electricity regarding the construction of high tension wire in Long Island City by the Long Island Railroad Company does not state any cause for the Commission taking action.]

\* See foot note, page 9.

Commissioner Eustis presented the following report in answer to the communication of November 30, 1908, from John H. O'Brien, Commissioner of Water Supply, Gas and Electricity, regarding the construction of a high tension line in Long Island City by the Long Island Railroad Company, copies of which were ordered sent to Commissioner O'Brien, and to the Long Island Railroad Company:

REPORT OF COMMISSIONER EUSTIS.

In the matter of the protest of John H. O'Brien, Commissioner of Water Supply, Gas and Electricity, against the Long Island Railroad Company for building a high tension line through its Sunnyside yards, referred to me, I beg to make the following report:

The Commissioner of Water Supply, Gas and Electricity makes three separate allegations against the Long Island Railroad Company:

(1) That they are building a high tension line through the Sunnyside yards without a permit from his department.

(2) They are violating section 528 of the New York Charter in that they intend crossing viaducts used as streets with their construction over the Sunnyside yards.

(3) He calls attention to the general criticism of the present construction of this road as more dangerous than that of the New York Central Railroad construction, as stated in the decision of this Commission in the New York Central case.

The present high tension line of the Long Island Railroad Company extends along the northerly side of its Sunnyside yards from Dutchkill street to Woodside avenue, from which point the line follows the main tracks of the railroad.

The proposed change by the railroad company is to remove this high tension line from the side of its yard, and run down the centre of its property along the side of its main track. The claim is made by the Commissioner that this is being done without a permit. The railroad company have submitted a permit received from the Commissioner of Water Supply, Gas and Electricity, dated December 27, 1905, and numbered 13,418. It was under this permit that the present line was constructed by the company. By its terms it grants permission to the Long Island Railroad Company to erect a pole line on their right of way between Dutchkill street and Glendale Junction, and string wires thereon. It does not say in what part of its right of way the poles shall be erected or the wires strung, and the railroad company take the position that this permit is ample and sufficient to warrant the moving of the first line that it constructed thereunder further within the lines of its own property. If not, the fact as to whether the permit was sufficient or not could only be determined after long litigation, which would make it a matter for the Commissioner of Water Supply, Gas and Electricity to take to the Corporation Counsel, as there is no claim made at the present time that the changing of the line makes it less adequate or more dangerous.

As to the violation of section 528 of the Charter, which reads: .

"No electrical conductors shall be constructed, laid or maintained above or below the surface of any street, avenue, highway or other public place, in any part of said city, without permission in writing from said Commissioner therefor."

If the construction of the new line through the centre of the company's property is not covered by the permit already issued by the Commissioner of Water Supply, Gas and Electricity, then it is certainly a matter for the Commissioner himself to act upon, as a violation of this section over which the city of New York has absolute control.

As to the reference in his communication that the construction of the high tension line of the Long Island railroad was more dangerous than that of the New York Central, I would say that the portion of the high tension line of the Long Island railroad referred to in the decision of this Commission in the New York Central case was not that portion now under consideration, but referred to the line lying farther to the eastward, where the line is constructed on wooden poles, and the adjacent property is open and there is no protection between the railroad's right of way and the abutting property. This portion of the Long Island Railroad Company's high tension construction is similar to that of the New York Central, and I do not see that there is anything this Commission can do in the matter of the protest unless the Commissioner desires to make a complaint on the ground that the new line will be inadequate or dangerous. If he should deem it best to make such complaint, then this Commission could grant him a hearing and hear the evidence. But from a brief examination on the ground and of the plans of the two lines, it appears that the new line is shorter than the old, and also that when all of the streets that are laid down on the map are opened the present line will cross a great many more streets than the proposed new line, and that the new line is to be built upon the same general lines of construction.

December 11, 1908.

**New York Central and Hudson River Railroad Company.—**  
**Maintenance of overhead high tension transmission system.**

Complaint Order No. 231.  
Hearing Order No. 299.  
Opinion of Commissioner Eustis.  
Final Order No. 700.

**COMPLAINT OF JOHN H. O'BRIEN, Commis-**  
**sioner of Water Supply, Gas and Elec-**  
**tricity of the City of New York,**  
*against*

**NEW YORK CENTRAL AND HUDSON RIVER**  
**RAILROAD COMPANY.**

Complaint Order No. 231 (see form, note 1), issued January 31st.  
Hearing Order No. 299 (see form, note 3), issued March 3d.  
Hearings were held March 18th, 27th, 30th, 31st, April 1st, 3d, 9th, 16th,  
22d, 30th, May 8th, 22d, June 4th and 15th.

**OPINION OF COMMISSION.**  
(Adopted August 28, 1908.)

**COMMISSIONER EUSTIS :—**

This is a proceeding brought by the Department of Water Supply, Gas and Electricity of the City of New York against the New York Central and Hudson River Railroad Company to compel it to remove its high tension aerial lines within the city of New York and place them under ground in conduits, on the ground that the same were constructed without a permit and are a menace to the public.

The New York Central and Hudson River Railroad Company in 1903 entered upon very important changes in connection with their railroad terminal in the city of New York, including the electrification of the line within the city, which will cause an elimination of the smoke nuisance in the Fourth Avenue Tunnel and of a number of grade crossings in connection with their work.

It appears from the testimony taken on this hearing that the railroad to devise plans for the electrification of the road appointed a commission consisting of William J. Wilgus, Bion J. Arnold, Frank J. Sprague, George Gibbs and Mr. Wade, the first four gentlemen named being well known electrical experts, and the last the superintendent of motive power of the New York Central Company.

The result of the deliberations of this commission was to design for their high tension transmission lines a duct or pipe system from Forty-second street to the Harlem river. High tension lines carrying 11,000 volts were for this space carried through iron pipes which were fastened to the side walls of the tunnel and carried along the side of the elevated part of their line south of the river. The evidence showed that this course was necessary for this section for the reason that they did not have a sufficient space outside of their retaining walls to insert tile ducts. Under the Harlem river the high tension wires are carried in cables at the bottom of the river. On the Bronx side the underground system is continued along the New York Central and Hudson River line to a point on the Harlem river at or near the bridge known as the Putnam Crossing bridge. From this point to the city line the plan devised was aerial on high steel lattice poles. On the Harlem division or branch the system of carrying the high tension wires in iron pipes along the retaining wall was continued to a point at or near the Bedford Park station, and around on the Port Morris line it was also carried either in iron pipes or underground ducts. From Bedford Park station the balance of the line northward was aerial on the same character of steel poles as used on the Hudson River line.

The Department of Water Supply, Gas and Electricity of the city of New York was not satisfied with the manner in which the railroad had constructed its high tension lines. It appears from a paper submitted by the counsel to the corpora-

tion that the application made to the city authorities by the railroad company for a permit to construct its line was not granted at the time it was asked for. The record shows that the permit granted to the railroad company by the city, which is printed at page 6 of the petitioner's appendix to his brief, is dated March 27, 1906, at which time the high tension lines were nearly completed, and this permit especially excludes the erection, construction, maintenance or operation of a pole line or overhead transmission conductors along the tracks or through any part of the territory embraced within the limits of the city of New York. Disregarding this exception of the permit the railroad company proceeded to complete the construction of, and to operate its high tension wires along its right of way and across certain of the highways within the city of New York. This action on the part of the railroad resulted in certain correspondence between the Department of Water Supply, Gas and Electricity and the Corporation Counsel, which resulted in the bringing of the complaint herein.

It appeared upon the hearing that the railroad company had tried for some time, through its attorneys, to get together with the city department and overcome its objections, but those efforts were unavailing, as the attorney for the railroad took the position that the Department of Water Supply, Gas and Electricity of the city of New York had no jurisdiction over its right of way, but the company was anxious to make a satisfactory arrangement, if possible, on account of the jurisdiction which was virtually conceded that the city department had over highways that were crossed by their high tension wires.

The complaint in brief is that the New York Central and Hudson River Railroad was maintaining an overhead high tension transmission pole line and conductors along the railroad of such company from a point north of Macombs Dam Bridge along the Harlem river and the Harlem ship canal and the Hudson river to the city limit, and that the same was maintained and operated without legal authority in violation of law, was a menace to the lives and properties of the employees of said road, to the residents of the city of New York along said road, and to the users of the streets and highways crossed by said route, and to the structure of the Interborough Rapid Transit Railroad at Kingsbridge and the users thereof.

The railroad by its answer denies in substance the allegation of operating and maintaining the overhead high tension transmission pole line without authority, but admits that it applied to the Commissioner of Water Supply, Gas and Electricity for a permit to cross with its aerial line certain streets within the city of New York, some of which were opened and traveled streets and others not opened or traveled, to obviate possible future controversy; and further alleges that pursuant to an agreement made with the city of New York, under the terms of chapter 425 of the Laws of 1903, it was compelled to complete the installation of its electric system and operate its trains, and to cease the use of steam as the motive power in the operation of trains, and to use electricity for such motive power prior to the first day of July, 1908, and that in order to be prepared to comply with this agreement it was necessary that the railroad should use the utmost diligence in completing its various preparations for the electrical operation, and that on the 24th day of August, 1905, it submitted plans of its proposed electrical operation to the Commissioner of Water Supply, Gas and Electricity, and that no action was taken on that application or submission of plans until June, 1906, but that in the interim, believing that it had a perfect right so to do, the railroad proceeded openly with the construction of its said high tension aerial transmission lines, and that the same was sufficiently complete by the 10th day of July, 1906, to allow the Hudson river section to put in operation experimentally, and on December 14, 1906, were put in regular operation for train service, and have been continuously used in such service ever since.

The Corporation Counsel advised the Commissioner, as follows: "I believe that the jurisdiction of your department, which is practically unquestioned as to the streets crossing the railroad, also extends to the entire right of way, but, of course, there may be enough in the doubt raised by the counsel for the company as to the jurisdiction of your department to produce litigation and delay." He then recommended that the Commissioner bring the matter before the Public Service Commission, under section 49 of the Public Service Commissions Law, whose authority over the private right of way of the railroad could not be seriously questioned. And the Corporation Counsel, representing the city, stated in his

opening that the company had proceeded in constructing its overhead electrical construction without the permission of the city to do so, and that its attention has been called to this fact, and that it had been requested to put its high tension wires under ground, but that it has failed so to do. He also stated in his opening that the railroad company had offered to meet certain objections to certain definite parts of construction, which was not satisfactory as the city wanted the entire line in subway construction. He also called attention to the fact that while the Department of Water Supply, Gas and Electricity never gave a permit for overhead construction to the New York Central road it may have given permission to other companies to use overhead construction in various places, but in none of those places did the same condition exist as along the line of the New York Central.

As this question was contested strongly by the Corporation Counsel, representing the Department of Water Supply, Gas and Electricity, and by the railroad, I feel it incumbent on me to go, to a slight extent, into the testimony as to the merits of the contention that the high tension aerial wires are dangerous, because not as safe as underground or conduit construction.

A large part of the evidence given on this hearing related to this issue, both sides calling eminent experts to testify to their various contentions. As a result, the aerial construction of these high tension lines of the railroad company has been conceded to be of the best by not only the experts produced by the railroad company but by the city's experts as well.

Prof. George F. Sever, one of the city's electrical experts, stated, referring to this aerial line, "the overhead construction as it exists is the very best kind of overhead construction, and with the recommendations I have made it would be very safe overhead construction." As to these recommendations we will refer later.

Charles F. Lacombe, the Chief Engineer of the Department of Water Supply, Gas and Electricity, also admitted that the aerial line of the New York Central is as good as exists anywhere, well built, strong and safe line, and later admitted that he would not criticise the line for a minute if it were in the farming country up the state.

The counsel for the complainant, when the counsel for the railroad was endeavoring to prove the character of the construction to be very substantial, stated: "That is admitted, and I think there can be no doubt about that proposition after the testimony of Mr. Lacombe. We admit your overhead construction is as strong as you can possibly make it, and that whatever criticisms the engineers of the city have made as to any imperfections which they have had brought to their attention or which they have seen as the result of their investigation, you have brought it to the highest state of perfection to which overhead construction can be brought."

George Gibbs, one of the experts selected by the railroad company, is Chief Engineer of the electric traction of the Long Island Railroad, and also had charge of the West Jersey and Seashore Railroad where a line was built from Camden to Atlantic City, also the Consulting Engineer of the Chicago, Milwaukee and St. Paul Railway Company, the Atlantic City line being 150 miles in extent and carrying 33,000 volts, gave as his experience that transmission lines generally are underground in congested cities and aerial in the open; that underground lines are more trouble than aerial, and that at the present time he is not in favor of putting a foot of underground transmission lines where he does not have to. In speaking of the lines of the New York Central that are complained of in this proceeding, he says: "The lines are, I should call, the best class of construction. The design of the poles and fastenings and the wires themselves are for a higher factor of safety than I think necessary, they are practically the same construction as those used on the Long Island."

Harold W. Buck, another electrical engineer called as an expert by the railroad, says of the aerial line under consideration that he had only recently examined the same and "found a first-class construction, built according to engineering standard, and having at least the factors of safety commonly adopted in engineering structures, and that this line is of the most modern type of overhead construction, and probably represents the highest state of the art to date, and that these overhead transmission lines are safe."

The position taken by the Corporation Counsel and his experts was that while the high tension aerial lines of the railroad company were of the best construction

and safe, they were not as safe as underground construction would be. The experts examined on behalf of the city were of the opinion that underground construction was safer than that overhead, while they had to admit that there were many more difficulties found arising from underground construction than aerial construction. The experts offered on behalf of the railroad company did not agree with the city's experts that underground was safer. Some of them would not even concede that it was as safe, owing to the difficulties of attending to break-downs. And the evidence in the proceeding showed that while the railroad company had had serious trouble and many delays in their subway high tension lines they had not had any delays or trouble with their aerial high tension lines.

The New York Central and Hudson River Railroad tracks from the point where the high tension aerial line begins at the Putnam Bridge crossing on the Hudson division to the city line runs along the bank of the Harlem River to Spuyten Duyvil, then along the bank of the Hudson river to the city line, where the tracks are on a grade which is only a trifle above highwater level. The high tension poles are carried along the river side on the track so that there is on this section no connection with these lines and the outside public except where the same are carried over highways or street crossings. Of these there is one at Highbridge, one at Morris Heights, one at University Heights, one at Broadway, and two in the Spuyten Duyvil section, making six overhead street crossings.

On the Harlem branch from the point at or near Bedford Park where the high tension lines begins to the city line the same runs along the westerly side of the track to Williamsbridge, and then across to the easterly side, and then runs along the same to the railroad yards above Woodlawn Bridge. They stretch across the driveway at Southern Boulevard, Mosholu Parkway, Woodlawn Road Bridge, Williamsbridge and Woodlawn Bridge, making five highway crossings.

The suggestions for improvements in this line referred to in connection with Professor Sever's testimony were as follows: that where the high tension wires cross streets or highways they should be supported by suspension wires or cables equivalent in strength to the high tension wires themselves. He further recommended that where other lines, telephone or telegraph, crossed the high tension lines above, there should be guard poles underneath, and the removal of the wooden poles now in use at Spuyten Duyvil; and that the line on the west side of the Harlem branch, between Bedford Park and Williamsbridge, should be removed to the easterly side of the track. In this connection, it is to be noted that the Chief Engineer of the Department of Water Supply, Gas and Electricity, Mr. Lacombe, testified that two or three of the poles east of Broadway had settled on their foundations, and that the crossing of the wires over public streets was without support. He admitted that the settling of the poles had been remedied before his last investigation. He also recommended that the grade of the line be less acute when it goes from low to high poles.

Notwithstanding the effort on the part of the Department of Water Supply, Gas and Electricity to compel the placing of these aerial lines of the New York Central under ground, it appears from the evidence that the Long Island Railroad Company have about forty miles of high tension wires with similar construction to that used by the New York Central, and the evidence of the various witnesses that were familiar with this line was in effect either that the line was similar or, as some of the witnesses said, the Long Island was not as good or as strong as the New York Central, and that they were given a permit for their construction by the complainant. The Corporation Counsel endeavored to destroy the effect of this evidence by claiming that these permits were temporary. These permits were offered in evidence, and there is nothing contained within the permit itself that would indicate that it was temporary; it is made absolute, subject to conditions upon the back, none of which are of a temporary nature, and so long as those conditions are complied with there would be a grave doubt after the railroad company had spent hundreds of thousands of dollars in erecting the line, that the city would be allowed to revoke the permit and require the company to lose all of the investment made for this purpose.

A personal examination made by me shows also that the line has not been guarded in any respect like the line of the New York Central. The number of streets crossed by the high tension aerial line of the Long Island is more than 4 to 1 as compared with the New York Central. The New York Central is inclosing its right of way where its high tension aerial lines are installed with a high

iron picket fence, so that it will be impossible for any one to reach their tracks or to get near the high tension line, except at station entrances. The Long Island Railroad Company has not done anything towards protecting the public from free access to their right of way, which is open, and in many cases the back yards of adjacent buildings are on a level with the base of the poles with no fence between.

The evidence also shows in addition to what the Long Island is doing in the way of high tension aerial lines, that at the present time in the city of New York there are 513 miles of high tension aerial lines, varying from 1,000 to 3,000 volts, divided as follows:

Borough of Manhattan . . . . .	1 mile.
" " Brooklyn . . . . .	130 miles.
" " The Bronx . . . . .	80 "
" " Queens . . . . .	152 "
" " Richmond . . . . .	150 "
	513

and that there are also 47 miles of high tension aerial wires in the city of New York with a voltage of from 3,000 to 11,000 volts, distributed as follows:

Brooklyn . . . . .	15 miles.
Bronx . . . . .	12 "
Queens . . . . .	20 "
	47

All of these wires are used for electric light or trolley service and are strung along the public streets, and exist, presumably, in accordance with a proper permit from the Department of Water Supply, Gas and Electricity.

The evidence showed that it was the intention of the railroad company to continue their electric zone to North White Plains on the Harlem, and to Croton on the Hudson branch, the former a distance of 24 miles, and the latter a distance of 34 miles from Forty-second street, so that in each case nearly three-fourths of the distance of the electric zone would be beyond the city line. The evidence showed that the surroundings of that section of the city through which the high tension line is now constructed is no more built up than it is beyond the city line. In fact on the Hudson River division there are a great many more buildings close to the line in passing through Yonkers and other towns than there are near the railroad within the city limits where the high tension line exists. And the same can be said of the situation on the Harlem branch. The high tension line begins at Bedford Park; between there and Williamsbridge there are a few houses whose yards abut upon the railroad right of way; beyond Williamsbridge the line runs on the easterly side of the track free and clear of any houses, and only adjacent to the Bronx river; while north of the city line the line will have to go through the city of Mt. Vernon and several of the Westchester towns before reaching North White Plains, some of which are quite thickly built along the railroad right of way.

When Mr. Floy, one of the city's experts, was on the stand and being examined by the counsel for the railroad company, he had to admit that there was just as much necessity for putting the high tension wires underground north of the city line as there was between the city line and Spuyten Duyvil, and in preparing an exhibit which was used in his testimony in regard to the cost of installing the underground ducts he only included the distance on the Hudson River division to Spuyten Duyvill, omitting that section between Spuyten Duyvill and the city line, a distance of something over two miles.

In view of this testimony the corporation counsel was asked if he would not eliminate from the hearing that section of the line that was embraced within his complaint lying between Spuyten Duyvill and the city line. This he declined to do, claiming that the railroad company should be forced to put all of its wires underground within the city limits.

This complaint is brought under section 49 of the Public Service Commissions Law, which gives this Commission jurisdiction over public service corporations within the State of New York in respect to the transportation of persons, freight or property within the State where the same are unjust, unreasonable, unsafe, improper or inadequate; the Commission shall determine the just, reasonable, safe,

adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation, etc.

The corporation counsel being compelled to go a step further after the evidence had shown that the present aerial lines of the railroad were not unsafe, claimed that the company should be compelled to put them underground for the reason that while they were safe as aerial lines they would be safer if placed underground. He also calls attention to the fact that a decision in this case would be a precedent of great importance, and that while our decision in this case will only affect the New York Central and Hudson River Railroad Company, he intimated that we may be deciding embryo cases as yet unnamed where the conditions are exactly similar. And in another point he calls attention to the fact that should this Commission decide that the aerial lines of the New York Central and Hudson River Railroad should go underground along their right of way, the city will notify the New York, New Haven and Hartford Railroad Company that their permit can not be granted for overhead lines and that they must retire the few hundred feet of construction that they now have in the city of New York; and also that the city would then go to the Long Island Railroad Company and demand of it that its lines, so far as is deemed necessary for public safety, be placed underground within a reasonable time.

I think the counsel to the complainant, when he states that his complaint is to enforce the law which requires all of the lines in cities to be placed underground, confuses the right of way of the railroad with a public street. The act that he calls our attention to relates to the burial of wires on streets, avenues and other highways, and does not pretend to apply to the private right of way of a railroad corporation. And even that act gives to the Commissioner discretion as to the suburbs of a city or along streets, avenues or other highways in sparsely inhabited or unoccupied portions of any such city. Where the public interests do not require the electrical conductors to be placed underground, and wherever in any other locality of said city it is deemed by said Board to be for any cause impractical to construct or successfully operate underground or electrical conductors required by any company, then and in either of those cases it shall be the duty of said Board of Commissioners to examine and grant the application for permission to deviate from an underground system.

It appears from this that the lawmakers had in mind the very circumstances that surround these outlying suburban districts, such as are traversed by the three great railroads leading into New York, the New York Central and Hudson River Railroad Company, the New York, New Haven and Hartford Railroad Company and the Long Island Railroad Company.

In regard to the New York, New Haven and Hartford Railroad Company, its system is entirely different from that of the New York Central and Hudson River Railroad Company. It uses what is known as the trolley system, taking its electricity from overhead, and it has this system installed now from Woodlawn to Stamford, and is waiting for permits to construct the same system over its New Rochelle and Harlem branch. Should it be compelled to bury its wires it could not use the present system, and all that it has now expended in developing the same would be absolutely lost.

The cases cited by the counsel for the complainant relating to proceedings that referred to companies using those streets and avenues of the city are not in any way analogous to the present case. To my mind it would be exceedingly unjust and unfair for this Commission to require the railroad company to place its wires underground so far as the city line, unless it were also to be compelled to place them underground to the terminus of its lines, for there is certainly no more danger to the traveling public (and that is the only danger that the complainant seemed to fear) in the aerial lines south of the city line than there would be north of the city line.

The great danger that the counsel for the complainant argued for upon the trial was the danger of derailment. He laid great stress on the fact that if a train of cars should be derailed, and if the cars should hit one of those poles, and if the pole should be knocked down, and if the high tension wire should strike the car, there might be a dreadful fatality. These poles are most of them, excepting at stations, located 14 feet from the center of the nearest track, and from the evidence produced it seemed most unlikely in case of a derailment that the cars

would ever reach the poles; and the testimony of some of the experts best qualified to testify as to what the result would be in case a car did hit one of those poles was that the pole would be broken loose at the base and the high tension wire was of sufficient strength to hold the pole in suspension, with no probability that the wire would ever touch the car.

Another danger that the counsel for the complainant was exercised about was the danger of interference from outsiders with the overhead high tension wire, such as vicious persons might be inclined to exercise during periods of strike, &c.

If vicious or malicious persons were inclined to injure the defendant in this case by interfering with their service, they could do more damage by interfering with the underground conduit than they could if they interfered with the aerial line. The evidence showed that interference with the aerial line would be very easily located and speedily remedied, while an interference with the conduit line would be exceedingly serious and dangerous; as a dynamite bomb placed in one of the manholes would readily place the whole system out of commission for considerable time, while the cutting or breaking of some of the aerial lines would leave the others in commission and even if they were all broken they could be very readily repaired.

Section 49 gives the Commission power to order improvements in equipments where the property and equipment are proved to be unsafe. I am of the opinion that the complainant has failed to prove in all the evidence submitted that the aerial system for the lines in question is unsafe. No evidence of any injury to persons or property due to these aerial lines was presented. There is no doubt that in many sections it might be exceedingly dangerous to have this high tension carried through the air even on such well constructed poles as those used by the defendant in this case, but what would be best in a thickly congested part might not be considered necessary in the sparsely settled portion, especially where the aerial lines run, over a private right of way, excepting at a few street crossings, entirely inclosed with a high iron picket fence, principally to protect the third rail. It also gives protection from the high tension wires as well to the public outside of those that are in the cars themselves.

There is no such thing as absolute safety in railroad operation, unless possibly if the roads were to run their cars at a rate a horse would be driven, five or six miles an hour. If the overhead lines are safe, as admitted by all, it would seem to be a great injustice for this Commission to compel the railroad company over its right of way to destroy its present lines, the construction of which has been so highly complimented by all of the witnesses, and construct an underground conduit system, estimated to cost from one and a half to two millions of dollars, especially when there is a doubt whether that form of construction is any safer than the overhead line.

I think that the best evidence of what will be is usually what has been, and the experience of this railroad since the inception of its electrical operation has been that its troubles have all been with the underground conduit system.

In coming to this decision it should be well understood that the Commission does not take a stand for aerial high tension lines in preference to underground, but is simply passing on the evidence submitted in this case, which has failed to prove that these aerial lines are unsafe.

I would therefore recommend that the complaint against the railroad company asking for an order requiring it to place its high tension aerial lines underground along its right of way within the city limits be denied.

This brings us to the consideration of the high tension lines crossing the various highways over which the complainant has stated that it has jurisdiction itself. Now, the evidence submitted on the trial in this case is all similar to that of the chief engineer of the complainant, Mr. Lacombe, in which he said "I think it would be weakening to the electrical strength of the line to place it underground across the streets and have it overhead on the right of way; that would be a botch job." He further says it would not in his opinion be safe construction looking at it from service and operating side and from the public side, and that if the line had to be put along the right of way and they had to have some overhead and some underground he would rather have it overhead all along than have overhead there and underground somewhere else, and then says, "if I could not have it our way, rather than have it part one way and part another, I would be in

favor of leaving it overhead." All of the other experts voiced the same sentiment as to changing the line from aerial to underground simply under the highways over which it crossed.

I therefore recommend that no order be issued regarding the aerial lines over the highways.

The special objections made to the aerial line by the complainant's experts in part have been remedied. One of the objections made by several of the witnesses was the fact that at certain highway crossings other lines, such as telephone and telegraph wires, crossed over the high tension lines. These, I understand, have all been, or will be, corrected by the company by the erection of higher poles so that the high tension lines will be the overhead lines; although at Spuyten Duyvil the railroad company has already had the telegraph and telephone lines placed beneath the high tension lines.

Another objection was raised to giving what was called suspension support to the high tension lines where they crossed highway crossings. I am of the same opinion as the expert, Gibbs, who said that he believed that if the high tension lines were made of sufficient strength it was not necessary to duplicate them by placing another wire upon the same poles to support them. In fact, it was more likely to weaken than it was to strengthen the structure. And I believe with the constant watching and attention that the defendant is giving to those aerial lines, that the present overhead aerial line crossing various streets in the city of New York is adequate and safe.

Objection was also made to the use of several wooden poles at or near Spuyten Duyvill. The evidence shows that these poles are for temporary use, and are to be replaced with steel poles as soon as the line of the road at this point has been changed.

Objection was made by the engineers of the complainant and Mr. Gibbs to a section of the high tension line on the Harlem division north of Woodlawn Road Bridge where the line comes on about a level with the back yards of a few houses, and it was suggested that this section be removed to the other side of the right of way. I have personally gone over this section and find that for most of the distance from Woodlawn Road Bridge to the cross-over bridge at pole 54, north of Williamsbridge, the westerly side of the right of way is the best side for the high tension line, as for quite a distance it is protected from the street by a high retaining wall. On the east side of the right of way there are now the telegraph and telephone wires in great numbers. These would necessarily have to be removed before the high tension wires could be constructed along that side. The present situation would be better remedied, in my judgment, by causing the present poles from No. 30 to No. 36 to be lengthened at least fifteen feet, and that the iron picket fence along this stretch be erected where not now done.

I would therefore recommend that an order issue directing the defendant to lengthen poles 31, 32, 33, 34 and 35 on its Harlem branch at least fifteen feet, and that the westerly side of the right of way between Woodlawn Road Bridge and Williamsbridge be protected by an iron picket fence similar to the fence now erected south of Woodlawn Road Bridge.

Thereupon the following final order was issued:

JOHN H. O'BRIEN, Commissioner of Water Supply,  
Gas and Electricity of the City of New York,  
*Complainant,*  
*against*

NEW YORK CENTRAL AND HUDSON RIVER  
RAILROAD COMPANY, *Defendant.*

FINAL ORDER No. 700.  
August 28, 1908.

"Maintenance of high tension transmission system  
contrary to permit granted by city."

This matter coming on upon a petition of John H. O'Brien, Commissioner of Water Supply, Gas and Electricity of the city of New York, verified January 23, 1908, and the answer of the New York Central and Hudson River Railroad Company

thereto, verified February 13, 1908, and an order for hearing having been made on said complaint and answer, being Order No. 299, of this Commission, on the 3d day of March, 1908, and returnable on the 18th day of March at 2:30 P. M., and said order having been duly served upon the New York Central and Hudson River Railroad Company, and said hearing having been duly held on the 18th day of March, 1908, at 2:30 o'clock P. M., and by adjournment duly had on March 27, 1908, and by adjournment duly had on March 30, 1908, and by adjournment duly had on March 31, 1908, and by adjournment duly had on April 1, 1908, and by adjournment duly had on April 3, 1908, and, by adjournment, duly had on April 9, 1908, and, by adjournment, duly had on April 16, 1908, and, by adjournment, duly had on April 22, 1908, and, by adjournment, duly had on April 30, 1908, and, by adjournment, duly had on May 8, 1908, and, by adjournment, duly had on May 22, 1908, and, by adjournment, duly had on June 4, 1908, and, by adjournment, duly had on June 15, 1908, before Hon. John E. Eustis, Commissioner, presiding, William P. Burr, Esq., Assistant Corporation Counsel, appearing for the complainant, and Alexander S. Lyman, Esq., General Attorney, appearing for the New York Central and Hudson River Railroad Company; and the Commission being of the opinion after said hearing that the New York Central and Hudson River Railroad Company ought to make the changes in its overhead high tension transmission system herein-after provided, in order to promote the safety and the convenience of the public, and in order to secure safe, adequate, and proper service and facilities for the transportation of passengers;

*It is ordered,* That the New York Central and Hudson River Railroad Company lengthen to the extent of at least fifteen feet, poles Nos. 31, 32, 33, 34 and 35 of its overhead high tension transmission system on its Harlem branch;

*And it is further ordered,* That the said company protect the westerly side of its right of way between Woodlawn Road Bridge and Williamsbridge with an iron picket fence, similar to the fence now erected south of Woodlawn Road Bridge;

*And it is further ordered,* That except as hereinbefore provided, said complaint of John H. O'Brien, Commissioner of Water Supply, Gas, and Electricity of the city of New York against the New York Central and Hudson River Railroad Company, be, and it hereby is, dismissed, without prejudice to the right of the Commission to make such order or orders for hearing as it may deem necessary upon any of the matters contained in said complaint;

*And it is further ordered,* That this order shall take effect on the 28th day of August, 1908, and remain in force until modified by further order of this Commission.

*And it is further ordered,* That said New York Central and Hudson River Railroad Company notify this Commission in writing within five days after the service upon it of this order, whether the terms of this order are accepted and will be obeyed.

**New York, New Haven and Hartford Railroad Company, Harlem River and Portchester Railroad Company.—Application for permission to operate the Harlem River and Portchester Railroad by the high potential, alternating electric current system.**

In the Matter  
of the

Application of the NEW YORK, NEW HAVEN &  
HARTFORD RAILROAD COMPANY and the  
HARLEM RIVER & PORTCHESTER RAILROAD  
for permission and approval to exercise the right  
to operate the Harlem River and Portchester Rail-  
road by the high potential, alternating electric cur-  
rent system, under section 53 of the Public Service  
Commissions Law.

CASE No. 1,001,  
HEARING ORDER.  
December 1, 1908.

Whereas, the Public Service Commission for the First District has received the petition of the New York, New Haven & Hartford Railroad Company and of the Harlem River and Portchester Railroad, dated and acknowledged November 19, 1908, praying the permission and approval of said Commission to exercise the right to operate the Harlem River & Portchester Railroad by high potential, alternating electric current system, under section 53 of the Public Service Commissions Law; and

Whereas, it appears from said petition that the construction to be made incidental to the use of the high potential, alternating electric current system on the Harlem River & Portchester Railroad and the right to operate trains by means of such high potential, alternating electric current system, are to be made and exercised in both districts;

Now therefore, it is

*Resolved*, That the application of the New York, New Haven & Hartford Railroad Company and of the Harlem River and Portchester Railroad be heard by and before the Public Service Commission for the First District on the 11th day of December, 1908, at 2:30 o'clock in the afternoon in the hearing room of the Public Service Commission for the First District, and that said New York, New Haven & Hartford Railroad Company and the Harlem River and Portchester Railroad publish a notice of said application and of the time and place of said hearing in the following newspapers: New York Times and the New York Evening Post, published in the city of New York, on at least two separate days before said hearing, and file proof of such publication with the Secretary of the Public Service Commission for the First District on or before the opening of said hearing.

Hearing held December 11th.

## INSPECTION OF RECORDS, POWER PLANTS AND EQUIPMENT OF STREET RAILROAD CORPORATIONS.

**Street Railroad Corporations.**— Inspection of records, power plants and equipment.

\* [The Commission has express power to enter the offices of street railroad companies to inspect their records, and may delegate this power to its officers or employees. It has authority to inspect power plants of such companies. It also has power to require such companies to give its electrical engineer access to their car barns to ascertain whether its order to repair cars is being obeyed. Procedure to enforce this right.]

The counsel to the commission rendered the following opinion as to the right of employees of the commission to enter car barns.

### OPINION OF COUNSEL.

July 2, 1908.

*Public Service Commission for the First District:*

Sirs:—I have received the communication of the Secretary, dated June 25, 1908, transmitting a letter from the Electrical Engineer, in which he states that the watchmen at the car barns of the New York City Railway have refused to permit him to enter the buildings for the purpose of examining street cars directed to be repaired by certain orders of the Commission. My opinion is asked as to what are the rights of the Commission in the premises.

Subdivision 3 of section 66 of Article IV of the Public Service Commissions Law provides that the Commission,

"shall have access through its members or persons employed and authorized by it to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture or distribution of gas by any such person, corporation or municipality."

The sections of the act referring to the powers of the Commission in respect to railroads, street railroads and common carriers confers no such specific power upon the Commission. This may perhaps be explained by the fact that Article IV of the act relating to gas and electrical corporations was substantially a re-enactment of the prior statute relating to that subject (Chap. 737, Laws of 1905).

But section 45, subdivision 2, provides that

"Each commission shall have the general supervision of all common carriers, \* \* \* and shall have power to and *shall* examine the same and keep informed as to their general condition, \* \* \* and the manner in which their lines, owned, leased, controlled or operated, are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements."

Subdivision 3 of that section provides that the Commission,

"shall have power to examine all books, contracts, records, documents and papers of any person or corporation subject to its supervision."

\* See foot note, page 9.

New York Central and Hudson River Railroad Company.—  
Maintenance of overhead high tension transmission system.

Complaint Order No. 231.  
Hearing Order No. 299.  
Opinion of Commissioner Eustis.  
Final Order No. 700.

COMPLAINT OF JOHN H. O'BRIEN, Commis-  
sioner of Water Supply, Gas and Elec-  
tricity of the City of New York,  
*against*

NEW YORK CENTRAL AND HUDSON RIVER  
RAILROAD COMPANY.

Complaint Order No. 231 (see form, note 1), issued January 31st.  
Hearing Order No. 299 (see form, note 3), issued March 3d.  
Hearings were held March 18th, 27th, 30th, 31st, April 1st, 3d, 9th, 16th,  
22d, 30th, May 8th, 22d, June 4th and 15th.

OPINION OF COMMISSION.  
(Adopted August 28, 1908.)

COMMISSIONER EUSTIS:—

This is a proceeding brought by the Department of Water Supply, Gas and Electricity of the City of New York against the New York Central and Hudson River Railroad Company to compel it to remove its high tension aerial lines within the city of New York and place them under ground in conduits, on the ground that the same were constructed without a permit and are a menace to the public.

The New York Central and Hudson River Railroad Company in 1903 entered upon very important changes in connection with their railroad terminal in the city of New York, including the electrification of the line within the city, which will cause an elimination of the smoke nuisance in the Fourth Avenue Tunnel and of a number of grade crossings in connection with their work.

It appears from the testimony taken on this hearing that the railroad to devise plans for the electrification of the road appointed a commission consisting of William J. Wilgus, Bion J. Arnold, Frank J. Sprague, George Gibbs and Mr. Wade, the first four gentlemen named being well known electrical experts, and the last the superintendent of motive power of the New York Central Company.

The result of the deliberations of this commission was to design for their high tension transmission lines a duct or pipe system from Forty-second street to the Harlem river. High tension lines carrying 11,000 volts were for this space carried through iron pipes which were fastened to the side walls of the tunnel and carried along the side of the elevated part of their line south of the river. The evidence showed that this course was necessary for this section for the reason that they did not have a sufficient space outside of their retaining walls to insert tile ducts. Under the Harlem river the high tension wires are carried in cables at the bottom of the river. On the Bronx side the underground system is continued along the New York Central and Hudson River line to a point on the Harlem river at or near the bridge known as the Putnam Crossing bridge. From this point to the city line the plan devised was aerial on high steel lattice poles. On the Harlem division or branch the system of carrying the high tension wires in iron pipes along the retaining wall was continued to a point at or near the Bedford Park station, and around on the Port Morris line it was also carried either in iron pipes or underground ducts. From Bedford Park station the balance of the line northward was aerial on the same character of steel poles as used on the Hudson River line.

The Department of Water Supply, Gas and Electricity of the city of New York was not satisfied with the manner in which the railroad had constructed its high tension lines. It appears from a paper submitted by the counsel to the corpora-

tion that the application made to the city authorities by the railroad company for a permit to construct its line was not granted at the time it was asked for. The record shows that the permit granted to the railroad company by the city, which is printed at page 6 of the petitioner's appendix to his brief, is dated March 27, 1906, at which time the high tension lines were nearly completed, and this permit especially excludes the erection, construction, maintenance or operation of a pole line or overhead transmission conductors along the tracks or through any part of the territory embraced within the limits of the city of New York. Disregarding this exception of the permit the railroad company proceeded to complete the construction of, and to operate its high tension wires along its right of way and across certain of the highways within the city of New York. This action on the part of the railroad resulted in certain correspondence between the Department of Water Supply, Gas and Electricity and the Corporation Counsel, which resulted in the bringing of the complaint herein.

It appeared upon the hearing that the railroad company had tried for some time, through its attorneys, to get together with the city department and overcome its objections, but those efforts were unavailing, as the attorney for the railroad took the position that the Department of Water Supply, Gas and Electricity of the city of New York had no jurisdiction over its right of way, but the company was anxious to make a satisfactory arrangement, if possible, on account of the jurisdiction which was virtually conceded that the city department had over highways that were crossed by their high tension wires.

The complaint in brief is that the New York Central and Hudson River Railroad was maintaining an overhead high tension transmission pole line and conductors along the railroad of such company from a point north of Macombs Dam Bridge along the Harlem river and the Harlem ship canal and the Hudson river to the city limit, and that the same was maintained and operated without legal authority in violation of law, was a menace to the lives and properties of the employees of said road, to the residents of the city of New York along said road, and to the users of the streets and highways crossed by said route, and to the structure of the Interborough Rapid Transit Railroad at Kingsbridge and the users thereof.

The railroad by its answer denies in substance the allegation of operating and maintaining the overhead high tension transmission pole line without authority, but admits that it applied to the Commissioner of Water Supply, Gas and Electricity for a permit to cross with its aerial line certain streets within the city of New York, some of which were opened and traveled streets and others not opened or traveled, to obviate possible future controversy; and further alleges that pursuant to an agreement made with the city of New York, under the terms of chapter 425 of the Laws of 1903, it was compelled to complete the installation of its electric system and operate its trains, and to cease the use of steam as the motive power in the operation of trains, and to use electricity for such motive power prior to the first day of July, 1908, and that in order to be prepared to comply with this agreement it was necessary that the railroad should use the utmost diligence in completing its various preparations for the electrical operation, and that on the 24th day of August, 1905, it submitted plans of its proposed electrical operation to the Commissioner of Water Supply, Gas and Electricity, and that no action was taken on that application or submission of plans until June, 1906, but that in the interim, believing that it had a perfect right so to do, the railroad proceeded openly with the construction of its said high tension aerial transmission lines, and that the same was sufficiently complete by the 10th day of July, 1906, to allow the Hudson river section to put in operation experimentally, and on December 14, 1906, were put in regular operation for train service, and have been continuously used in such service ever since.

The Corporation Counsel advised the Commissioner, as follows: "I believe that the jurisdiction of your department, which is practically unquestioned as to the streets crossing the railroad, also extends to the entire right of way, but, of course, there may be enough in the doubt raised by the counsel for the company as to the jurisdiction of your department to produce litigation and delay." He then recommended that the Commissioner bring the matter before the Public Service Commission, under section 49 of the Public Service Commissions Law, whose authority over the private right of way of the railroad could not be seriously questioned. And the Corporation Counsel, representing the city, stated in his

or operated, are conducted and operated, including the adequacy, security and accommodation afforded by its service and with respect to its compliance with all provisions of law and its charter requirements.

*Further resolved*, That the Chairman may designate from time to time a Commissioner to preside, with power to call and to adjourn hearings hereunder.

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## APPRAISAL OF PROPERTY OF STREET RAILROAD CORPORATIONS IN THE BOROUGHS OF MANHATTAN AND THE BRONX.

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**New York City Railway Company.**—Appraisal of property of street railroad companies in the Boroughs of Manhattan and the Bronx.

In the Matter  
of

Inability on the part of the NEW YORK CITY RAILWAY COMPANY to furnish adequate service upon the street car lines and still maintain sufficient funds to pay the rentals of many leased lines.

ORDER No. 575.

June 12, 1908.

Whereas, the receivers of the New York City Railway Company have stated to the Commission that it is impossible for them to provide adequate service upon the street car lines in Manhattan because there would not be sufficient funds to pay the rentals of many leased lines if the service were made adequate; and

Whereas, the investigations made into the books of this company and its subsidiary companies last fall indicated in certain instances that the companies were greatly over-capitalized and that the rentals being paid were out of proportion to the value of the lines; and

Whereas, thousands of citizens of New York will be seriously inconvenienced by the abolition of transfers by the receivers; and

Whereas, it has been asserted that if a fair rental were paid to the subsidiary companies based upon a fair value of their property the company could give adequate service and retain a satisfactory system of transfers; and

Whereas, these questions raised by the action of the receivers cannot be definitely answered without a knowledge of the value of the property of each line as one factor; therefore be it

*Resolved*, That the Commission proceed to inventory and appraise the property, tangible and intangible, of the street railway companies in the boroughs of Manhattan and The Bronx, and that the Chairman have general direction of the work.

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## MATTERS RELATING TO GAS AND ELECTRIC COMPANIES OTHER THAN RATES.

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**Gas Meter Tests.**—Rules and regulations regarding testing of gas meters.

Commissioner Maltbie presented the following report, which was approved regarding the testing of gas meters.

REPORT OF COMMISSIONER MALTBIE.

NEW YORK, September 20, 1907.

To the Public Service Commission for the First District:

SIRS:—Your committee to whom was referred the question of the testing of gas meters begs to submit the following report:

The Public Service Commissions Law of 1907 transferred the powers and duties

of the State Inspector of Gas Meters within the area of Greater New York to this Commission. It became incumbent upon the Commission, therefore, to provide a system for the inspection, testing and sealing of gas meters, and a committee was accordingly appointed.

Your committee first ascertained the methods which had been used by the State Inspector, hoping to be able to recommend their continuance, so that the work might proceed without any interruption or delay. It was found, however, that meters had been stamped by the State Inspector that had not been tested, i. e., that a few sample meters were selected from a large number of new meters and the entire consignment approved upon the basis of a test of a few meters. It was also found that the brass tag affixed to the meters by the State Inspector was so attached that a meter might be changed, repaired or completely overhauled without destroying or affecting the tag in any way. The system of computing the percentage of inaccuracy was also found to be wrong.

These facts made it quite apparent to your committee that, in order to comply with the purpose and letter of the statute, which required that every meter be "inspected, approved and sealed," an entirely new system should be devised which would provide for thorough and accurate inspection, impartial testing and a method of sealing which would not permit the meter to be opened without breaking the seal.

Your committee recommend that Mr. A. E. Forstall, a consulting gas engineer, be employed by the Commission to prepare and submit such a scheme, and this recommendation was adopted by you. Mr. Forstall's report, with the exception of certain blank forms and instructions to testers, is submitted herewith. The instructions and forms are on file in the office of this Commission.

With Mr. Forstall's report as a basis, a method of proving and sealing meters was formulated, a staff of meter testers organized and actual work begun, with the approval of the Commission. This system has now been in operation over two months and has proved to be satisfactory except in a few minor details, which will need to be altered when sufficient experience has been had to demonstrate the precise way in which improvements may be made. The essential features of the scheme are as follows:

1. That every meter shall be inspected, approved and sealed before being put into use.
2. That the "sealing" shall be of such a nature that the meter cannot be opened, altered or changed in any way without the breaking of this seal, thereby making it necessary to reinspect, reapprove and reseal before the meter may again be put into use.
3. That at present the testing of meters be limited to the accuracy of registration, ordinarily called the "check" test. This seems to be the best practice and is generally adopted, with a few exceptions. This matter is discussed in Mr. Forstall's report.
4. That any meter regarding which complaint shall be made shall be tested by an employee of the Commission.
5. That the fee to be paid by the applicant if the meter is slow or correct within the limits allowed by the law, or by the company if the meter is fast beyond the percentage fixed in the statutes, shall be as small as may be reasonable.
6. That a notice be sent to the complainant and to the company of the results of such inspection.
7. That an adequate number of meter testers be employed, so that there will be no delay, either to the consumer or to the company, in the testing of meters.

In pursuance of this plan eleven testing stations have been established already; two are at the factories of two meter companies, and nine at the shops of seven gas companies. At the present moment, sixteen testers are at work, and the number will be increased as rapidly as competent men can be secured. The civil service list was exhausted some time ago and difficulty has been encountered in securing a sufficient number of men to proceed with the work as rapidly as desired, but a new list has just been submitted. The number of testing stations will be increased as soon as the companies equip them and the apparatus approved by the inspector of the Commission.

The wages paid meter testers have been fixed by the Commission temporarily at \$3 per day for eight hours work.

## 694 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

The staff of the Commission will probably include one chief inspector, one complaint inspector, and from fifteen to twenty testers at work in the testing stations. Already marked improvement in the work of the testers has been manifest, and the number of meters tested per day per employee is about double the number tested under the State Inspector prior to July 1, 1907.

So far as the work of the Commission is concerned, there are four classes of meters:

1. New meters; those not having been used previously.
2. Repaired meters; those having been used, removed from the consumers' premises, but not on complaint, and repaired by the companies.
3. Complaint meters; those whose accuracy has been questioned in a complaint to the Commission.
4. Removed meters; those that have been in use, removed from the consumers' premises, but not on complaint, and not repaired.

The testing of these meters is now being performed under the following instructions:

### WORK OF RECORD CLERK.

#### (A) Complaint Meters.

(1) When the application is made in person, the clerk may fill out application blank, form G1 or G2, and have it signed, one blank being used for each meter. If the fee is paid, a receipt (form G3) shall be given, the stub being detached and retained until the complaint is settled. The companies are to be billed monthly for the amounts due. When the application is made by letter, form G1 or G2 shall be filled out by the clerk so far as possible from the data given in the letter. When the application is made by a company, the clerk shall fill out and send to the company form G17.

(2) The clerk shall then take two cards (form G4), one white and one yellow, which cards shall be exact duplicates, numbered serially with the application number and used in order of these numbers, and enter upon them the date, the name and full address of the person making the application, the name of the gas company supplying the premises, the amount of the fee, and if the size of the meter is known, and if the fee is paid indicate it by entering the date in the proper space. If not all of the data called for on forms G1 or G2 are given, the clerk shall send the forms G1 or G2 to the complaint inspector, to be filled out and returned. When form G1 or G2 has been returned by the inspector, the missing data shall be inserted on form G4, and the application shall be placed on file in alphabetical order according to the name of the applicant. When the white sheet of form G5 has been returned, the clerk shall send this white sheet to the proper gas company to constitute the removal order for the meter, shall enter upon form G4 the date upon which this order has been sent, and shall then send the yellow card of form G4 to the proper tester at the testing station as a notification that the meter described on the card is to be received and tested.

(3) When the card has been returned from the testing station after the test has been recorded, the record clerk shall send notice of the result of the test to the gas company, using for this purpose form G7, and shall also send notice of the result of the test to the consumer, using form G8, except when the application for the test was made by the gas company; then he shall use form G18. After filling out these notices, he shall enter upon form G4 (white and yellow) the dates on which they were sent. If the meter is fast beyond the limits allowed by law, the fee deposited for the test shall be returned to the consumer, as provided in forms G8 and G9, and the record clerk shall enter upon form G4 (white and yellow) and the stub of G3 the date upon which this fee was returned. He shall also enter upon form G4 the date upon which the fee for a fast meter is paid by the gas company. In the case of a meter which is correct or slow, the last two entries are not to be made.

(4) When forms G4 (white and yellow) have been entirely filled out, the white card shall be filed in the proper place alphabetically by the name of the consumer, and the duplicate (yellow) shall be filed in the numerical order of the application.

(5) The record clerk shall keep all fees until the test has been made and the record completed. He shall then deposit them monthly with the city treasurer, and take a receipt therefor, to be deposited with the Secretary of the Commission.

## (B) All Meters.

(6) The record clerk shall file and have charge of the daily reports made by the meter testers. The yellow sheets shall be kept as records until the books for which they are duplicates shall have been filled and returned by the testers, and then these duplicates shall be destroyed.

(7) He shall also make up monthly summaries of tests not later than the fifteenth of the month for the month preceding. For this work he shall use forms G13 to G16, and these forms shall be kept by him on file.

## WORK OF CHIEF INSPECTOR.

(8) All apparatus for the testing of meters shall be examined, approved and stamped by the chief inspector before being used, and he shall also oversee the proving and sealing of all meters.

## WORK OF COMPLAINT INSPECTOR.

## (A) Complaint Meters.

(9) The complaint inspector to whom an application is assigned shall take the forms sent him, prepare and send out notices when he will call (form G10), and proceed to the premises designated. On arrival there he shall obtain and enter the missing data for the completion of the forms, shall locate the meter, enter its description on the forms and collect the fee, if it has not been paid, entering on the forms the payment of this fee with date and giving the proper receipt for it (form G3) to the consumer. He shall then fill out form G5, detach the white original sheet from the tag and attach the tag to the meter, entering in the proper place on form G4 the date as an indication that the meter has been tagged. At the end of the day he shall send to the record clerk all the copies of form G and all the white sheets of form G5 for the meters to which he has attended, and the receipt stubs (form G3) which he has used. At least once each week he shall account to the clerk for all fees received by him.

## WORK OF THE METER TESTERS.

## (A) Complaint Meters.

(10) Upon receiving form G4 at the testing station, the tester shall look out for the arrival of the meter described on this form, and when it is received, shall enter in the proper place his name and the date of its receipt. He shall then test the meter, after allowing it to remain in the station not less than five hours in order that the temperature may be equalized, within twenty-four hours after its receipt unless the consumer desires to be present at the test and it cannot be arranged to secure his presence within this time limit.

(11) Complaint meters should always be given two tests, and if these two do not agree with each other a third test should be made. If the two tests agree, or if the three tests are made, the average of all the tests shall be taken as representing the condition of the meter. After the test has been made, the tester shall enter the record in the meter test record book, writing "complaint meter" in the "remarks" column and shall also enter upon form G4 the cubic feet passed by the meter and by the prover and the percentage fast or slow shown by the test. He shall also fill out form G8 and paste it upon the meter, and shall seal the meter in the manner hereinafter prescribed, provided the meter is accurate within the limits allowed by statute. At the end of each day he shall send to the record clerk all the copies of form G4 upon which he has recorded the results of tests during the day.

## (B) All Meters.

(12) Before beginning work each morning the tester should see that the temperature of the water in the prover is the same as that of the air in the room, the temperature of the water being adjusted if these temperatures are not the same. For the purpose of observing these temperatures two thermometers must be provided, one being placed in the water and the other hung up in the air, and these two thermometers should be checked against each other to see that when exposed to the same conditions their readings are the same. The tester must also be

satisfied that the meters which he has to test have been in the immediate vicinity of the provers for a sufficient length of time to have acquired the temperature of the air surrounding the provers. While testing, no direct sunlight should be allowed to strike either the provers or the meters to be tested and the observations of the temperature of the water and of the air shall be made at least every fifteen minutes.

(13) Meters are to be given the check test only, but while making this test the size of the dial is to be observed, and it is to be noted whether this dial is of the proper size for the size of the meter.

(14) After the meter has been connected to the prover, a test for the tightness of the connections must be made by closing the meter outlet with the hand and throwing the prover cock wide open, so that full pressure is thrown on all the connections and the meter, and then shutting the prover cock and watching the pressure gauge to see that the pressure holds. If the pressure does not hold, the connections must be gone over and another test for tightness made before the test of the meter is begun.

(15) From 1 cubic foot to 1½ cubic feet of air must be passed through the meter before beginning the test. The object of this is to make certain that the meter is working freely before the test begins.

(16) The proving hand on the dial must be brought to, and stopped at, one of the divisions on the up stroke of this dial and the test started with the hand at such a division and concluded when the hand again reaches this division after making a complete revolution.

(17) Meters showing on the first test a proof of either 99 or 101, or one between these limits, are to be passed on this single test.

(18) Meters showing on the first test a proof between 98½ and 99, or between 101 and 101½, or exactly 98½ or 101½, are to be given a second test, the average of the prover readings and of the percentages of errors for the two tests being recorded and the meter being passed, provided the average proof is more than 98 and not more than 102.

(19) Meters showing on the first test a proof between 98 and 98½, or between 101½ and 102, or exactly 102, are to be given a second test, passing four cubic feet through three and five-light meters on this second test, and are to be passed if the average proof shown by the two tests is above 98 and not more than 102, the average of the prover readings reduced to the normal 2 feet basis for three and five-light meters, and the average of the percentages of error for the two tests being recorded. If necessary, a third test may be made with such meters, but only when there is some doubt as to the accuracy of the first two tests. If the third test is made the average of all three tests is to be taken as being correct, and the meter is to be passed or rejected on this average.

(20) Meters showing a proof of 98, or less than 98, or more than 102 on the first test, or as an average of either two or three tests, as specified above, are to be rejected and returned for readjustment by the company presenting them for test. Form G6 shall be filled out and attached to each meter rejected. After such readjustment the meters are to be again tested.

(21) The bell of the meter prover should be drawn to its full height and the scales wiped the last thing at the end of each day's work and left up during the night. The object of this is to prevent discoloration of the body of the bell and of the scales. Care should be taken that the cocks are shut off tight so that the bell will remain up all night, and by taking the reading on the scale at the time of stopping work and again when work is begun the next morning a test is obtained of the tightness of the prover and the connections up to the prover cock and of this cock itself. In case these readings show that the prover is not tight the leak should be found and remedied before making any tests.

(22) The record of every meter tested should be recorded in full in the meter test record book, and in the "remarks" column a note shall be made to show whether the meter is a new, repaired, complaint or removed meter, wherever possible.

(23) Every meter ascertained to be correct within the limits allowed by law shall be sealed, and no meter shall be sealed which has been found to be incorrect according to the preceding instructions. The tester should see that the ring is

properly placed upon the meter, so that the ring will overlap the seam on the cover. In no case shall a meter be sealed unless the ring is properly placed. Sufficient wax should be poured into the ring so as to permit the making of a clear impression of the seal, and the impression should be clear and easily legible.

A table showing the percentages of errors under varying conditions appears as an appendix to this report.

Respectfully submitted,  
(Signed) MILO R. MALTBIE,  
Commissioner.

**TABLES SHOWING PERCENTAGE OF ERRORS IN METERS WHOSE REGISTRATION DIFFERS FROM THE INDICATIONS OF THE TEST GAS HOLDERS.**

Meter Registering Two Feet.						
Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	
1.80	11.11 fast	1.96	2.04 fast	2.11	5.21 slow	
1.81	10.50 fast	1.97	1.52 fast	2.12	5.66 slow	
1.82	9.89 fast	1.98	1.01 fast	2.13	6.10 slow	
1.83	9.29 fast	1.99	0.50 fast	2.14	6.54 slow	
1.84	8.70 fast	2.00	nil	2.15	6.98 slow	
1.85	8.11 fast	2.01	0.50 slow	2.16	7.41 slow	
1.86	7.53 fast	2.02	0.99 slow	2.17	7.83 slow	
1.87	6.95 fast	2.03	1.48 slow	2.18	8.26 slow	
1.88	6.38 fast	2.04	1.96 slow	2.19	8.68 slow	
1.89	5.82 fast	2.05	2.44 slow	2.20	9.09 slow	
1.90	5.26 fast	2.06	2.91 slow	2.21	9.50 slow	
1.91	4.71 fast	2.07	3.38 slow	2.22	9.91 slow	
1.92	4.17 fast	2.08	3.85 slow	2.23	10.31 slow	
1.93	3.63 fast	2.09	4.31 slow	2.24	10.71 slow	
1.94	3.09 fast	2.10	4.76 slow	2.25	11.11 slow	
1.95	2.56 fast					

Meter Registering Five Feet.						
Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	
4.50	11.11 fast	4.67	7.07 fast	4.84	3.31 fast	
4.51	10.86 fast	4.68	6.84 fast	4.85	3.09 fast	
4.52	10.62 fast	4.69	6.61 fast	4.86	2.88 fast	
4.53	10.38 fast	4.70	6.38 fast	4.87	2.67 fast	
4.54	10.13 fast	4.71	6.16 fast	4.88	2.46 fast	
4.55	9.89 fast	4.72	5.93 fast	4.89	2.25 fast	
4.56	9.65 fast	4.73	5.71 fast	4.90	2.04 fast	
4.57	9.41 fast	4.74	5.49 fast	4.91	1.83 fast	
4.58	9.17 fast	4.75	5.26 fast	4.92	1.63 fast	
4.59	8.93 fast	4.76	5.04 fast	4.93	1.42 fast	
4.60	8.70 fast	4.77	4.82 fast	4.94	1.21 fast	
4.61	8.46 fast	4.78	4.60 fast	4.95	1.01 fast	
4.62	8.23 fast	4.79	4.38 fast	4.96	0.81 fast	
4.63	7.99 fast	4.80	4.17 fast	4.97	0.60 fast	
4.64	7.76 fast	4.81	3.95 fast	4.98	0.40 fast	
4.65	7.53 fast			4.99	0.20 fast	
4.66	7.30 fast	4.83	3.52 fast	5.00	nil	
5.01	0.20 slow	5.22	4.21 slow	5.43	7.92 slow	
5.02	0.40 slow	5.23	4.40 slow	5.44	8.09 slow	
5.03	0.60 slow	5.24	4.58 slow	5.45	8.28 slow	
5.04	0.79 slow	5.25	4.76 slow	5.46	8.42 slow	
5.05	0.99 slow	5.26	4.94 slow	5.47	8.59 slow	
5.06	1.19 slow	5.27	5.12 slow	5.48	8.76 slow	
5.07	1.38 slow	5.28	5.30 slow	5.49	8.93 slow	
5.08	1.57 slow	5.29	5.48 slow	5.50	9.09 slow	
5.09	1.77 slow	5.30	5.66 slow	5.51	9.26 slow	
5.10	1.96 slow	5.31	5.84 slow	5.52	9.42 slow	
5.11	2.15 slow	5.32	6.02 slow	5.53	9.59 slow	
5.12	2.34 slow	5.33	6.19 slow	5.54	9.75 slow	
5.13	2.53 slow	5.34	6.37 slow	5.55	9.91 slow	
5.14	2.72 slow	5.35	6.54 slow	5.56	10.07 slow	
5.15	2.91 slow	5.36	6.72 slow	5.57	10.23 slow	
5.16	3.10 slow	5.37	6.89 slow	5.58	10.39 slow	
5.17	3.29 slow	5.38	7.06 slow	5.59	10.55 slow	
5.18	3.47 slow	5.39	7.24 slow	5.60	10.71 slow	
5.19	3.66 slow	5.40	7.41 slow	5.61	10.87 slow	
5.20	3.85 slow	5.41	7.58 slow	5.62	11.03 slow	
5.21	4.03 slow	5.42	7.75 slow	5.63	11.19 slow	

Meter Registering Ten Feet.						
Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	Reading of Scale of Gas Holder. Feet.	Amount of Error. Per Cent.	
9.00	11.11 fast	9.34	7.07 fast	9.68	3.31 fast	
9.01	10.99 fast	9.35	6.95 fast	9.69	3.20 fast	
9.02	10.86 fast	9.36	6.84 fast	9.70	3.09 fast	
9.03	10.74 fast	9.37	6.72 fast	9.71	2.99 fast	
9.04	10.62 fast	9.38	6.61 fast	9.72	2.88 fast	
9.05	10.50 fast	9.39	6.50 fast	9.73	2.77 fast	
9.06	10.38 fast	9.40	6.38 fast	9.74	2.67 fast	
9.07	10.25 fast	9.41	6.27 fast	9.75	2.56 fast	
9.08	10.13 fast	9.42	6.16 fast	9.76	2.46 fast	
9.09	10.01 fast	9.43	6.04 fast	9.77	2.35 fast	
9.10	9.89 fast	9.44	5.93 fast	9.78	2.25 fast	
9.11	9.77 fast	9.45	5.82 fast	9.79	2.15 fast	
9.12	9.65 fast	9.46	5.71 fast	9.80	2.04 fast	
9.13	9.53 fast	9.47	5.60 fast	9.81	1.94 fast	
9.14	9.41 fast	9.48	5.49 fast	9.82	1.83 fast	
9.15	9.29 fast	9.49	5.37 fast	9.83	1.73 fast	
9.16	9.17 fast	9.50	5.26 fast	9.84	1.63 fast	
9.17	9.05 fast	9.51	5.15 fast	9.85	1.52 fast	
9.18	8.93 fast	9.52	5.04 fast	9.86	1.42 fast	
9.19	8.81 fast	9.53	4.93 fast	9.87	1.32 fast	
9.20	8.70 fast	9.54	4.82 fast	9.88	1.21 fast	
9.21	8.58 fast	9.55	4.71 fast	9.89	1.11 fast	
9.22	8.46 fast	9.56	4.60 fast	9.90	1.01 fast	
9.23	8.34 fast	9.57	4.49 fast	9.91	0.91 fast	
9.24	8.23 fast	9.58	4.38 fast	9.92	0.81 fast	
9.25	8.11 fast	9.59	4.28 fast	9.93	0.70 fast	
9.26	7.99 fast	9.60	4.17 fast	9.94	0.60 fast	
9.27	7.87 fast	9.61	4.06 fast	9.95	0.50 fast	
9.28	7.76 fast	9.62	3.95 fast	9.96	0.40 fast	
9.29	7.64 fast	9.63	3.84 fast	9.97	0.30 fast	
9.30	7.53 fast	9.64	3.73 fast	9.98	0.20 fast	
9.31	7.41 fast	9.65	3.63 fast	9.99	0.10 fast	
9.32	7.30 fast	9.66	3.52 fast	10.00	nil	
9.33	7.18 fast	9.67	3.41 fast			
10.01	0.10 slow	10.37	3.57 slow	10.73	6.80 slow	
10.02	0.20 slow	10.38	3.68 slow	10.74	6.89 slow	
10.03	0.30 slow	10.39	3.75 slow	10.75	6.98 slow	
10.04	0.40 slow	10.40	3.85 slow	10.76	7.06 slow	
10.05	0.50 slow	10.41	3.94 slow	10.77	7.15 slow	
10.06	0.60 slow	10.42	4.03 slow	10.78	7.24 slow	
10.07	0.70 slow	10.43	4.12 slow	10.79	7.32 slow	
10.08	0.79 slow	10.44	4.21 slow	10.80	7.41 slow	
10.09	0.89 slow	10.45	4.31 slow	10.81	7.49 slow	
10.10	0.99 slow	10.46	4.40 slow	10.82	7.58 slow	
10.11	1.09 slow	10.47	4.49 slow	10.83	7.66 slow	
10.12	1.19 slow	10.48	4.58 slow	10.84	7.75 slow	
10.13	1.28 slow	10.49	4.67 slow	10.85	7.83 slow	
10.14	1.38 slow	10.50	4.76 slow	10.86	7.92 slow	
10.15	1.48 slow	10.51	4.85 slow	10.87	8.00 slow	
10.16	1.57 slow	10.52	4.94 slow	10.88	8.09 slow	
10.17	1.67 slow	10.53	5.03 slow	10.89	8.17 slow	
10.18	1.77 slow	10.54	5.12 slow	10.90	8.26 slow	
10.19	1.86 slow	10.55	5.21 slow	10.91	8.34 slow	
10.20	1.96 slow	10.56	5.30 slow	10.92	8.42 slow	
10.21	2.06 slow	10.57	5.39 slow	10.93	8.51 slow	
10.22	2.15 slow	10.58	5.48 slow	10.94	8.59 slow	
10.23	2.25 slow	10.59	5.57 slow	10.95	8.68 slow	
10.24	2.34 slow	10.60	5.66 slow	10.96	8.76 slow	
10.25	2.44 slow	10.61	5.75 slow	10.97	8.84 slow	
10.26	2.53 slow	10.62	5.84 slow	10.98	8.93 slow	
10.27	2.63 slow	10.63	5.93 slow	10.99	9.01 slow	
10.28	2.72 slow	10.64	6.02 slow	11.00	9.09 slow	
10.29	2.82 slow	10.65	6.10 slow	11.01	9.18 slow	
10.30	2.91 slow	10.66	6.19 slow	11.02	9.26 slow	
10.31	3.01 slow	10.67	6.28 slow	11.03	9.34 slow	
10.32	3.10 slow	10.68	6.37 slow	11.04	9.42 slow	
10.33	3.19 slow	10.69	6.45 slow	11.05	9.51 slow	
10.34	3.29 slow	10.70	6.54 slow	11.06	9.59 slow	
10.35	3.38 slow	10.71	6.63 slow	11.07	9.67 slow	
10.36	3.47 slow	10.72	6.72 slow	11.08	9.75 slow	
10.37	9.83 slow	11.15	10.31 slow	11.21	10.79 slow	
10.38	9.91 slow	11.16	10.39 slow	11.22	10.87 slow	
10.39	9.99 slow	11.17	10.47 slow	11.23	10.95 slow	
10.40	10.07 slow	11.18	10.55 slow	11.24	11.03 slow	
10.41	10.15 slow	11.19	10.63 slow	11.25	11.11 slow	
10.42	10.23 slow	11.20	10.71 slow			

## MR. FORSTALL'S REPORT.

Alfred E. Forstall, Consulting Engineer,  
No. 58 William street,  
New York, July 27, 1907.

*Public Service Commission First District, State of New York, No. 320 Broadway,  
New York City:*

GENTLEMEN:—I beg to submit the following report upon the manner in which new and repaired gas meters should be tested and sealed, and also upon the procedure to be followed with regard to applications from gas consumers for an official test of their meters:

## TESTS TO BE MADE.

The official testing of gas meters has, in every case with which I am acquainted except two, been confined to testing for accuracy of registration in passing gas at a normal rate. The two exceptions are those of Great Britain, where the Sales of Gas Act, 1859, which governs this testing, provides for a test for "soundness or leakage" to determine whether or not the meter registers a small consumption; and of Minneapolis, where both a test for registration under small consumption and one for regularity of delivery under a large consumption are provided for in addition to the tests for accuracy of registration when passing gas at a normal rate.

In my opinion these exceptions to the general rule cover matters that are entirely without the sphere of an official test of gas meters. The only object of such a test is to give the gas consumer an assurance that the instrument employed for measuring the amount of gas that he consumes gives correct measure, and this is fully covered by the test for accuracy of registration when the meter is passing gas at a normal rate. A meter that will not register under a small consumption will register slow under normal conditions, and if the fault is sufficiently serious it will cause the meter to be rejected when tested for accuracy of registration. Irregularity of delivery under a large consumption does not affect the accuracy of registration, and if the gas which is being measured is to be used for fuel purposes it does not even affect the quality of the service unless the irregularity is very pronounced. It therefore is not a matter with which the official testing of the accuracy of the meter as a measure has to do.

I would therefore advise that the only test of a gas meter made by you be that for accuracy of registration when the meter is passing gas at the rate of six cubic feet per hour for each "light" of its size.

## METHOD OF MAKING TEST.

This test, which is known technically as the "check" test, is made by connecting the meter, with its outlet capped by a check, in which is a circular orifice of such a size that when the pressure on the meter is adjusted to 15-10 inch of water air will pass through this orifice, and consequently through the meter, at the rate named above, to a "meter prover" and passing from the prover through the meter the amount of air required to cause the proving hand on the meter dial to make one complete revolution. This revolution corresponds to the registration on the meter dial of a definite quantity of gas, which varies with the size of the meter. The "meter prover," which consists of a holder, that is, an inverted sheet metal bell, gilded so as to be capable of moving freely up and down in a sheet metal tank which is filled with water to seal the otherwise open bottom of the holder, carries on the side of the holder a scale graduated in feet and tenths of a foot over its whole length and in hundredths of a foot over a certain portion of its length. The difference between the readings of this scale at the beginning and end of the test shows the volume of air that has actually passed out of the holder and through the meter. If this volume corresponds exactly to that registered by one complete revolution of the proving hand of the meter the latter is correct, while if it is larger the meter is low, and if it is smaller the meter is fast, the percentage of error in either case being found by dividing the difference between the prover reading and the meter reading by the prover reading. Thus if the prover reading is 2.02 cubic feet, while that of the meter is 2 cubic feet, the meter is  $\frac{2.02}{2} = 0.99$  per cent. slow, while if the prover reading is 1.98 cubic feet, while that of the meter is 2 cubic feet, the meter is  $\frac{2}{1.98} = 1.01$  per cent. fast.

The accuracy of the graduation of the scale on the meter prover holder is assured by having the graduations marked in the first instance as the result of a careful calibration of the holder by means of a cubic foot bottle certified by the National Bureau of Standards at Washington and by periodical testing by means of such a cubic foot bottle in order to provide against any error arising through deformation of the holder. The prover holders are made with working capacities varying from two cubic feet up to ten cubic feet, and sometimes are made even larger, for use with different sized meters, the five-cubic-foot size being the most common.

Before making a test it is necessary to have the temperature of the water in the tank of the prover the same as that of the air in the room and that of the meter to be tested. To insure the latter condition the meter must be allowed to stand in the testing room at least four hours before being tested and care must be taken to keep both the prover and the meters to be tested out of the direct rays of the sun.

These and other precautions that should be taken to insure the accuracy of the test are covered in the Instructions for Meter Testers appended to this report.

## METHOD OF SEALING.

Meters that have been tested and found to be correct within the limits provided by law should be sealed in such a way that it will be impossible to open the portion of the meter containing the registering mechanism and adjust this mechanism without defacing the seal. In my opinion this requirement can only be met by a sealing wax seal so placed as to partly cover the seam between the top plate and the body of the meter, since the registering mechanism can be gotten at only by removing this top plate. Seals for this purpose have been designed and made under the approval of Commissioner Maltbie and are now in use. Each seal bears a different number, and as a record is kept of the number of the seal used by each tester it is a simple matter to find out at any time by whom any meter was sealed.

From what precedes it will be seen that it will be necessary to seal not only all new meters but also all meters which have been given repairs that necessitate the removal of the top plate and the adjusting of the registering mechanism, even though these meters had been tested and sealed previous to such repairs.

In addition to the sealing wax seal the Massachusetts Commission of Gas and Electricity use a brass badge bearing a serial number which is attached to each meter when it is sealed for the first time. The object of this badge is to enable the record of the test of any meter to be easily found in the record of test books, something that would be difficult to do in the absence of such a badge. It seems probably, however, that the necessity for looking up such records would so seldom arise that the affixing of the serially numbered badges may be an unnecessary requirement. I would advise that these badges be not used until further investigation is made as to their practical value. In the meantime the meter test record book form has been drawn up to contain a column for these numbers, so that in case this system is adopted there will be a place in the records for entering the numbers.

## PROBABLE NUMBER OF METERS TO BE HANDLED PER YEAR.

From information received from the gas companies doing business in the First District, I estimate that you will be called upon to test and seal each year about 66,000 new meters and 177,000 repaired meters, apart from the meters tested on applications from individual consumers. It is difficult to tell how many tests will have to be made on such applications since the number has varied very widely from year to year, but it is not probable that the maximum of about 6,000, reached in 1905, will be exceeded. Indeed, the number of meters tested on complaint in the thirteen months ending December 31, 1906, was only about 5,000, and it is probable that as soon as the gas consumers understand that the seal of the Commission on a meter stands for an actual and careful test of its accuracy the number of applications for the official testing of individual meters will fall much below even the smaller amount. As bearing on this probability the Massachusetts figures are of interest and show that in 1902, out of a total of 42,688 meters tested 996 were tested on consumers' complaints, while in 1906, although the total had increased to 61,034 the number of tests on complaint had dropped to 424. It is therefore probable that for the first year or two the number of meters to be tested and sealed will not be over 250,000 per year, or an average of 833 per day, counting 300 working days in the year. There will, however, be times during the months from September to March when meters will have to be handled at a rate of possibly 1,200 per day, and correspondingly there will be times during the rest of the year when the rate may fall as low as 500 per day.

## NUMBER OF METERS WHICH A MAN SHOULD TEST AND SEAL PER DAY OF EIGHT HOURS.

Working at a bench equipment with two provers, a good, active man should be able to test and seal nine three-light meters, or twelve five-light meters per hour. It being possible to do more of the five-light than of the three-light, because in both cases two cubic feet of air has to be passed through the meter, and in the five-light it is passed at a rate of thirty cubic feet, while in the three-light it is passed at a rate of only eighteen cubic feet per hour. These figures are based upon giving each meter only one test, but when, on repaired meters especially, the first test comes out close to the limit of error allowed, a second test should be made to make it certain that the meter is inside of these limits, and on account of these second tests the number that can be counted upon per hour will not run over seven three-lights or ten five-lights. As these two sizes will make up over two thirds of the meters tested, it can be taken that the average number of meters tested and sealed per day will be about seventy-five. On this basis it will be necessary to employ an average of from ten to eleven testers, and this number would have to be increased to sixteen at the time of greatest activity in the selling and repairing of meters.

This is the number of men that will be required for testing only, and in addition it will be necessary to provide for visiting the premises of the consumers making complaints for the purpose of obtaining the descriptions of the meters and tagging them for removal. The number of meters that can be located and tagged per man per day will depend so greatly upon the extent to which the individual locations are scattered over the territory that it is practically impossible to make any estimate of the number of men required for this work in advance of actual experience. If the applications for tests were to continue to come in at the rate which prevailed during 1906, of about 384 per month, or fifteen per working day, it would seem as if at least two men would be required for this work.

The men assigned to this part of the work should be of a higher grade of intelligence and education than it is necessary to have in men who are to do nothing but test meters.

## PLACE OF TESTING.

I would advise that all new meters purchased by gas companies in the district from meter companies whose factories are also located in the district be tested at these factories. It will be more economical to do this than to wait until the meters reach the companies and test them at their shops, because in the case of the small companies located on the outskirts of the district the meters will be purchased in comparatively small lots, and the time occupied by a tester in going to and coming from the companies' shops will be a very large proportion of the total time occupied in actually testing the meters. On the other hand, the meter factories are located in the centre of the district and the testers can be expected to reach these factories in their own time, and in addition will be able to test the meters in larger batches and so be able to average more for a given length of working time than if they are tested at the companies' shops. There should be no difficulty in identifying the meters which are to be used in the district, and therefore no danger of testing and sealing meters which are not going to be used in the territory covered by you. As far as I am able to learn the only meter factories in the district are as follows:

## METER FACTORIES IN DISTRICT AND PROBABLE REQUIREMENTS AT EACH FACTORY.

American Meter Company, eleventh avenue and Forty-seventh street.

New York Improved Meter Company, No. 306 East Forty-seventh street.

United States Meter Company, No. 229 Chestnut street, Brooklyn.

I have not found that the last named factory is selling any meters in the district.

The largest factory is that of the American Meter Company, and its manager tells me that at the busy time of the year they will sell to companies in the district at the rate of 8,000 meters per month, although it is not probable that they will sell altogether more than from 50,000 to 55,000 new meters per year to companies in the district, or an average of about 170 to 185 per day.

The manager of the New York Improved Meter Company was not very definite as to the number of meters that they put out in the district but put his lowest sales as being about 5,000 per year. As the company's estimates show only about 66,000 new meters purchased per year, it is not probable that this factory will run over 10,000 to 15,000 meters per year, or an average of between thirty to fifty per day.

On the basis of the figures given above it will, therefore, probably be necessary to keep two testers at the factory of the American Meter Company all the time and increase this number up to four at the time of greatest activity, while it will not be necessary to have a man stationed at the New York Improved Meter Company's factory all the time, although at times it may be necessary to place two men there.

## TESTING OF REPAIRED METERS.

The meters which have been repaired to such an extent as to require retesting and rescaling can be best tested at the shops of those companies who do their own repairing, or who have repairing done outside of the district, and at the factories when the companies who do not do their own repairing have it done by the factories in the district.

The companies who do their own repairing are as follows:

Consolidated Gas Company, which has one large shop at the corner of First avenue and Twenty-first street, where repairs are made not only to its own meters but also to those of the New York Mutual Gas Light Company. According to the information furnished by the superintendent of shops of the Consolidated Gas Company there are repaired at this shop, to an extent requiring retesting and rescaling, meters to the number of 100,000 per year, or an average of about 330 per day.

Standard Gas Light Company, the meter shop of which is on Ninety-first street east of First avenue. The number of meters repaired at this shop and which it would be necessary to retest and rescale, was stated to be about 12,500 per year, or an average of about 41 per day.

New Amsterdam Gas Company, the shop of which is on Forty-second street east of First avenue. At this shop it was stated that the number of meters repaired and which would require retesting and rescaling was about 13,000 per year, or an average of about 44 per day.

Central Union Gas Company, the shop of which is at the corner of Alexander avenue and One Hundred and Forty-second street, borough of The Bronx. This company repairs not only its own meters but also those of the Northern Union Gas Company, and of the Westchester Lighting Company, only part of the territory supplied by the latter company being in the First district. The company informed me that the number of meters belonging in the First District which were repaired at this shop and would require retesting and rescaling would be about 13,000 per year, or an average of about 44 per day.

The Brooklyn Union Gas Company, which has two meter repair shops, one being on Atlantic avenue and the other at the corner of Bedford avenue and South Second street, both in Brooklyn. The total number of meters repaired by the company during a year was stated to be about 35,000, or about 117 per day, of which two-thirds are handled at the Atlantic avenue shop and the remaining one-third at the Bedford avenue shop. The Brooklyn Union Company also repairs the meters belonging to its subsidiary companies, viz., the Flatbush Gas Company, the Jamaica Gas Light Company, the Newtown Gas Light Company and the Richmond Hill and Queens Gas Company, and the meters of these companies are included in the total given above.

## 702 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

Kings County Lighting Company, which has its meter repair shop at its works at Fifty-fifth street and First avenue, Brooklyn, and which repairs, in such a way as to require retesting and resealing, 600 meters per year, or an average of only 2 per day.

The Brooklyn Borough Gas Company, which has a repair shop at its works on Sheepshead Bay, Coney Island, and which repairs, in such a way as to require retesting and resealing, about 500 meters per year, or less than 2 per day.

Queens Borough Gas and Electric Company at Far Rockaway, which repairs at its own shop an average of 4 meters a day, and has, in addition to this, about 100 meters per year repaired at the meter factories.

The New York and Richmond Gas Company, which has its office at Stapleton, and its works at Clifton, Staten Island, and which repairs at its own works about 700 meters and has repaired at the meter factories within the District about 600 meters per year.

The companies which at present do not repair their own meters, but have them repaired at the meter factories within the First District, are —

The Bronx Gas and Electric Company, Westchester, and the New York and Queens Gas Company, at Flushing.

From the figures given for the companies which repair their own meters it will be seen that it will be necessary to keep an average of between four and five men at the shop of the Consolidated Gas Company, and that almost the full time of two men will be required by the Brooklyn Union Company, while the Standard, New Amsterdam and Central Union companies will, between them, come close to requiring the services of two more. The number of meters repaired per day by the other companies are so small that their requirements during the course of a year will not amount altogether to more than about forty days for one man.

### TESTING OF COMPLAINT METERS.

The complaint meters, that is, those which are tested because of doubt in the mind of the consumers in regard to their accuracy, will, in every case, have to be tested at the shop of the company to which the meter belongs. The present custom with the Brooklyn Union Company is to have all these complaint meters tested at the office of the branch in the territory to which the consumer belongs, and it is possible that this method may prove as convenient as that of having all the complaint meters sent to one or the other of the two meter repair shops, but this is a question which will have to be decided as a matter of experience.

It may also be found, after further experience, that it will be more convenient both for the companies and the Commission, to have the complaint meters from the small companies operating in the more distant parts of the district sent to a central testing place, such as that at the factory of the American Meter Company, or that at the shop of the Consolidated Gas Company. In case this method of handling complaint meters for the small companies is adopted the consumer should be made to pay the cost of sending the meter to this central testing place and of returning it to the shop of the company in addition to the regular fee charged for the State inspection. This is done in Massachusetts, where practically all of the complaint meters from different parts of the State are sent to Boston to be tested.

### METHOD OF HANDLING APPLICATIONS FROM CONSUMERS FOR METER TESTS.

I would advise that applications for the testing of meters by consumers be handled as follows: When the application is made in person the clerk shall fill out the application blank, form "A" (copy of all the forms mentioned is appended to this report), and have it signed. When the application is made by letter the application blank need not be filled out, the letter serving as the written application required by law.

The application having been properly signed, or having been received by letter, the clerk shall take a card (form "B"), which cards shall be numbered serially with the application number and used in order of these numbers, and enter upon it the date, the name and address of the person making the application, and the name of the gas company supplying the premises and the amount of the fee, if the size of the meter is known, and if the fee is paid indicate it by entering the date in the proper space and give the proper receipt for it. When this data has been entered the clerk shall turn the card over to the Chief Inspector.

The Chief Inspector will assign the application to one of his subordinates, entering the name of the person to whom this assignment is made in the proper place.

After the assignment to the proper inspector has been entered, the clerk shall separate the two parts of form "B," file the duplicate in the proper place in order of the application number and turn the original over to the Chief Inspector.

If the application is in writing the clerk shall also fill out and mail to the consumer form "L" as a notification that the application will be attended to.

All the applications assigned to any one inspector shall be turned over to him at the end of each day.

The inspector to whom an application is assigned shall take form "B" and proceed to the premises designated on this form. On arrival there he shall collect the fee, if it has not been paid, entering on form "B" the payment of this fee and giving the proper receipt for it, and shall locate the meter and enter upon form "B" its description. He shall then fill out form "C," detach the white original sheet from the tag and attach the tag to the meter, entering the date in the proper place on form "B" as an indication that the meter has been tagged. At the end of the day he shall send in to the office all the copies of form "B" and all the white sheets of form "C" for the meters that he has attended to.

When they reach the office the clerk shall send the white sheets of form "C" to the proper gas companies to constitute the removal orders for the meters, shall

enter upon the cards, form "B," in the proper place, the date upon which these orders have been sent, and shall then send the cards to the proper testing stations as a notification that the meters described on them are to be received and tested.

Upon receiving form "B" at the testing station the tester shall look out for the arrival of the meter described on this form, and, when it is received, shall enter in the proper place the date of its receipt. He shall then test the meter, after allowing it to remain in the station not less than five (5) hours in order that the temperatures may be equalized, within twenty-four hours after its receipt, unless the consumer desires to be present at the test and it cannot be arranged to secure his presence within this time limit. After the test has been made the tester shall enter upon form "B" the cubic feet passed by the meter and by the prover, and the percentage, fast or slow, shown by the test. He shall also fill out form "D" and paste it upon the meter. At the end of each day he shall send into the office all the copies of form "B" upon which he has recorded the results of tests during the day.

When the card is returned from the testing station the record clerk shall send formal notice of the result of the test to the gas company, using for this purpose form "E," and shall also send formal notice of the result of the test to the consumer, using form "F" if the meter is correct or slow, and form "G" if the meter is fast. After filling out these notices he shall enter upon form "B" the date on which they are sent.

If the meter is fast and the fee deposited for the test is returned to the consumer the record clerk shall enter upon form "B" the date on which this fee was returned.

He shall also enter upon form "B" the date upon which the fee for a fast meter is paid by the gas company. In the case of a meter which is correct, or slow, the two last entries do not have to be made.

When form "B" has been entirely filled out it shall be filed in the proper place alphabetically by the name of the consumer, and the duplicate which has been held up to this time as a check upon the completion of the work shall be destroyed, or, if the original shall have become too soiled, the information on the original may be transferred to the duplicate and the latter filed, while the original is destroyed.

#### METHOD OF HANDLING APPLICATIONS FROM GAS COMPANIES FOR METER TESTS.

In many cases an agreement to have a meter tested officially is made between the gas company and the consumer affected, and the securing of the test is left to the gas company. In such cases the application for the test should be made upon form "J" and a description of the meter given upon this application. There is no reason why the meters covered by these applications should be tagged by a State Inspector, since, if there is any suspicion that the proper meter is not produced for test, this suspicion can be easily proved or disproved by an examination of the company's records, which will always contain a description of the meter set on the premises of each consumer. In fact, the Gas and Electric Commission of Massachusetts does not tag any of the meters which it tests on complaint, not even those located in Boston, which form by far the largest number of complaint meters tested by them, but depend entirely upon the ability to check the identity of the meter from the records of the company in case any suspicion arises.

A card, form "B," should, however, be filled out and all the entries except those in regard to payment of fee, assignment to inspector, and date of tagging, made as in the case of an application by a consumer before the duplicate is sent to the testing place. In addition, the fact that the application has been made by the company should be noted on the back of the card, as this fact will govern the notices to be sent out after the test. The original shall be kept in the office as a check upon the making of the test, as in the case of an application made by a consumer.

After the test has been made notices shall be sent to the consumer and to the gas company, but these notices, from the nature of the case, will differ slightly from those sent when the test has been made upon application of the consumer, and will be as per forms "M" and "N."

The gas companies shall be billed monthly for the fees for all the meters tested upon their applications, and also for those tested upon consumers' applications which have proved to be fast and the fee for which has, therefore, been returned to the consumer.

#### RECORD OF ALL METER TESTS.

Each meter tested shall be provided with a Gas Meter Test Record Book, ruled and printed according to the form which has already been handed in. In this book he shall enter in the proper columns the description of each meter tested and the record of the test, including the state of the index, the number of cubic feet of gas passed by the meter and by the prover, the percentage of error of the meter and whether fast or slow, the temperature of the water in the prover and the air in the testing room, and the pressure at which the test is made. He shall also enter any remarks that are called for by the test. These entries in the Test Record Book shall be made for complaint meters in addition to the similar entries on form "B." Each page of this book shall be signed by the meter tester making the tests recorded on it.

These books have been made up so that all of these entries will be made both on an original and on a duplicate sheet, and the duplicates are to be detached from the book and sent to the office of the Bureau of Gas and Electricity daily. At this office they will be filed in any suitable form of binder, the tests made by each man being kept all together.

#### RECORD OF WORK DONE BY EACH GAS METER TESTER.

From the gas meter test record sheets the number of meters of each size tested by each Meter Tester shall be made up for each day and entered upon a card 5 x 8 inches, which shall be headed:

## 704 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

### RECORD OF WORK DONE BY GAS METER TESTERS.

Month of ..... 19  
Name .....

and ruled so as to have a separate vertical column for the date and for each of the standard sizes of gas meters up to 300 lights. This card will have spaces for the entry of the work done on twenty-seven different days each month with a space at the bottom for the total for the month. A properly ruled form for this card is handed in with this report.

By means of these cards a complete record of the amount of work done by each Meter Tester will be available and it will be very easy to see from them just which of the men, if any, are not doing a full day's work.

### SUMMARY OF GAS METER TESTS.

For the purpose of keeping a summary of the meter tests so as to make it possible to know just how much work has been done at the end of each month, there should be made up books so ruled as to show a summary of all the gas meter tests made on each day. There will be two of these books, one of which will contain on each double page the record for a month of all the new meters and all the repaired meters tested during that month, these meters being divided by sizes into two classes, "O. K." and "Needing Adjusting," the latter being the meters that have been found to be in error to a greater extent than the limits allowed by law and which have therefore been turned back to either the maker or the gas company for adjustment and retest. A form of ruling for this book is handed in with this report.

The second book will be so ruled as to show on each double page the summary of the complaint meters tested in any one month, the meters being separated by sizes and there being given under each size the number found to be correct, fast and slow, and the total percentage fast and slow. There are also columns giving the total number O. K., fast and slow and the grand total percentage fast and slow, and in addition columns in which are to be entered the number and sizes of the meters which do not register or do not pass gas, the number fast or slow between definite percentage limits and the maximum percentage of error fast and slow shown in any test during the month, with the size of the meter showing these errors.

These summary books, which will be kept in the office of the Bureau of Gas and Electricity, the proper figures being prepared from the reports sent in by the different Meter Testers, and entered daily, will provide at any time all the information in regard to the results of the meter testing that experience shows it is advisable to have.

In my opinion the various forms and books which have been described above are all that will be required for the handling of complaint gas meter tests and the recording of the tests of such meters as well as those made of new and repaired meters.

In addition to the "Instructions for Meter Testers" and the copies of the various forms and books which have been mentioned above there are also appended to this report "Instructions for the Handling of Applications for Tests by Consumers," divided into instructions as to the work done by each person through whose hands the application, or the meter covered by it, has to pass.

Respectfully submitted,  
(Signed) ALFRED E. FORSTALL.

### "Breakdown Service."

\*[Electric companies may not refuse to provide breakdown service to competitors.]

#### PRELIMINARY REPORT OF COMMISSIONER MALTBIE.

Approved by the Commission.

To the Public Service Commission for the First District: April 1, 1908.

SIRS:—Having completed for the moment the consideration of "breakdown service" in the investigation of the electric light companies and having obtained from the New York Edison Company concessions of great benefit and financial value to consumers, I submit the following preliminary report pending the completion of the entire investigation.

#### TERM DEFINED.

The term "breakdown service" has such a technical meaning that a few words of explanation are necessary. Narrowly defined, it is the service which an electricity supply company renders when it provides a "connection" between its system and the installation of a consumer having his own electric plant, and agrees to stand ready to supply such consumer with current whenever his plant actually breaks down in whole or in part. As currently used, however, the term includes two other kinds of service: first, the service rendered by the supply company to the owners of private plants (both readiness-to-serve and current) during nights,

\* See footnote, page 9.

Sundays, holidays and perhaps longer periods when only a small amount of current relatively is demanded; second, a like service rendered by the supply company to owners of private plants during the peak period of the day—usually about 5 P. M.—when the consumption of current reaches its maximum for the day. These two classes of service are quite different and distinct from pure breakdown service; they are really auxiliary service; but in common usage the three classes are included in the single term "breakdown service." This is largely due to the difficulty in separating any one class from the others in practice; for if a service connection is provided, the consumer has it within his power to take current at any time for any purpose. It has been suggested that the switch might be locked and thus placed under the control of the supply company, but this would involve so great delay in securing the current when needed and would impose such a burden upon the supply company, that it has not been considered practicable.

It should be understood that the term "breakdown" does not apply to the service furnished by the supply company to any part of a building or plant, even though there may be a private electric plant upon the premises which is used to provide current for the remainder of the building or plant, where the part thus supplied is so entirely distinct and separate that it cannot be connected in any way with the private plant. In other words, if a circuit is "segregated" and cannot be supplied from any other source, it is not a part of the breakdown system, and all of the companies have stated that they have been and are willing to supply current to segregated circuits at the usual rates.

#### CHARACTER OF THE SERVICE.

Although it has not yet been found practicable to design a connection of such a character as to differentiate automatically any one of the three classes of service from the others, they are in theory quite different and distinct. In order to provide a pure breakdown service, a supply company must provide merely the distribution system and the service connections for the maximum load to be demanded at any one time and such apparatus in the generating and sub-stations as would be equivalent to the private plants disabled at any one moment. In other words, as plants very seldom break down, it would not be necessary for the supply company to duplicate the total installations of the private plants, but merely such a portion as would be out of use at any one moment. Such service partakes of the nature of insurance, and if statistics were available to show with what frequency plants break down and how long they remain out of use, just as the insurance companies have mortality statistics extending over many decades, it would be comparatively easy to determine a reasonable charge for this kind of service and to what extent it would impose a burden upon the supply company. It is probable, in view of the comparative infrequency of complete disability, that the actual demands made upon the supply company would be very few and would not involve great expense either in the way of fixed charges upon the duplicate plant kept ready for use or in the way of operating charges for units revolving slowly.

To supply the second class of consumers—those using current nights, Sundays, holidays and during periods when a small amount of current is used as compared with the total installations—the supply company would need to provide, as in the first case, the necessary service connections and distribution lines for each user. But as current would be demanded when the stations of the company would otherwise not be operated at their maximum capacity, it would not be necessary to provide station equipments specifically for this purpose. It might be necessary to keep certain units revolving slowly, but in this respect the service would not differ from the ordinary service where there must be constant readiness to serve somewhat in excess of the demand at that moment. Service of this character would be quite desirable from the standpoint of the supply company, and if "breakdown" users would restrict their auxiliary use to these periods, advantageous terms could be offered by the companies. What the exact rate should be would depend upon the amount of such use and the precise hours of the day and times of the year when it is demanded.

The third kind of service is the most expensive of all, for if no restrictions were placed upon the amount of current consumed or the time of its use, "break-

down" consumers could easily so plan their equipment that they would have sufficient capacity to supply all the current required except during the peak hours of the day. When the peak load began to come on, the "breakdown" user could take sufficient current from the supply company to handle this peak, breaking the connection when the peak was passed and the consumption became normal again. Inasmuch as the peak period for the breakdown consumer is apt to be the peak period for the supply company, this would mean that the supply company would be called upon for a considerable amount of current during a short period when the demands of the ordinary consumers are at their height. Thus the supply company would be obliged to maintain a considerable plant during the whole day in order to supply the breakdown consumer during one or two hours and to carry the surplus plant throughout the year in order to handle the winter maximum due to the short period of daylight and cloudy weather. Such service is expensive from the point of view of the company, because of the heavy fixed charges covering the whole year. It is also very beneficial to the consumer, because it enables him to provide a smaller plant than would otherwise be necessary and because it permits him to shift the most expensive part of his load upon the supply company. But here, again, the exact amount which should be charged for such service would depend upon the time and the extent of the use.

#### OBJECTIONS BY COMPANIES.

Various objections to breakdown service have been urged by the companies. They claim that if many private plants were to demand it and were to switch on suddenly, the maintenance of the proper voltage would be difficult. The evidence taken does not show that there have been such cases, and this objection does not appeal to me as having much weight. If the companies can maintain pressure in the face of the sudden storms which sweep over the city in the summer, they ought to be able to provide for the demands of auxiliary service which can be more or less foreseen.

A more serious difficulty would arise if there were a long continued coal strike, during which the price of coal would be so greatly advanced that private plants would find it cheaper to shut down entirely and take their current from the supply companies at the usual rates. In such cases it might be a serious hardship to require the companies to accept every person who applied for breakdown service without regard to the unusual conditions that had arisen. But such a situation would be most unusual, rarely occurs and would have to be dealt with in a special manner. In my opinion, it would not be proper to allow this unusual condition to prevent the provision of breakdown service under ordinary circumstances.

There are also several other objections of a technical nature, but the evidence shows that devices have been invented which will obviate these difficulties and render them of no serious importance.

It has been claimed also that it is not fair, even if practically possible, to ask the supply companies to furnish current to private plants, their competitors, when it becomes disadvantageous for these competitors to supply it themselves, any more than it would be fair to permit one express company to take the more profitable business and to compel a competitor to do that portion of its business which was conducted at a loss. The analogy is not sound, and the argument is fallacious. The requirement that breakdown service be supplied does not imply that one supply company shall provide current for another company at less than a fair price. Further, the private electric plants are not competitors, for they do not distribute current beyond their own premises. They cannot combine their plants and thus be of mutual assistance in case of disability, for by so doing they would be compelled to use the streets for their wires, and to do so would require a franchise and subject them to public regulation and control. It is not considered proper for a railroad company to refuse to carry a passenger during stormy weather merely because he uses his automobile or walks during fair weather or when he wishes to go only a short distance; neither does it seem fair for an electric supply company, which is also quasi-public, to refuse to supply an individual merely because he produces a portion of the current which he consumes. The electric companies have been given the use of public property: their wires are in the streets; they have many rights and privileges which the ordinary individual does not possess. It seems but fair, therefore, that they should also undertake to perform the obligations which go with these privileges.

and one of these fundamental duties is to supply current to every one who desires it and who pays a fair price.

It should not be assumed that breakdown service or any special kind of service must of necessity be supplied at the same rate at which other service of a different character and of a different cost is supplied. It may be that such special service as we are now considering should be supplied at a different rate from that charged for current under ordinary circumstances; but, *assuming that the rate is fair, that a reasonable profit is allowed to the company thereon, it is, in my opinion, the duty of the supply companies to provide breakdown service under ordinary circumstances.*

#### RATES OF CHARGE.

Applications for breakdown service have been made of only three companies in Greater New York. The United Electric Light and Power Company has but one consumer and no others have applied. The Brooklyn Edison Company has 10 consumers and has supplied every applicant. The New York Edison Company has 122 connections and is the only one that has refused of late years to give breakdown service; but it is also the only company where the service seems likely to become of such importance as to make it at all serious. Prior to the summer of 1906, when the act of the Legislature fixing the maximum price for current supplied in Manhattan at 10 cents per kilowatt hour took effect, the New York Edison Company supplied breakdown service to every applicant. The first application made after the new law took effect was rejected, and from that time until the Public Service Commission was created, the company refused to supply breakdown service, except to those who already had contracts.

This change in policy was productive naturally of many complaints, and the situation was finally brought to the attention of the Commission of Gas and Electricity. But prior to July 1, 1907, no action had been taken, although much consideration had been given to the subject. The complaints were renewed before this Commission last fall, and the Edison Company was urged to resume its former practice. To this the company objected, but after considerable discussion and much urging, the Edison Company submitted a proposal to the Commission in which they offered to furnish breakdown service, but insisted upon a higher rate of charge than formerly. The contracts which had been made had provided in most instances that the consumer should guarantee to pay a certain amount annually, ranging from \$10 per kilowatt of *installation*, under an agreement to use current during certain hours of the day only, to \$30 per kilowatt of *maximum demand* with unrestricted use. If the consumer did not use sufficient current at the ordinary rates to equal the guarantee, he agreed to pay the guarantee; but if the amount consumed at the usual rates exceeded the amount guaranteed, the guarantee had no effect of course. The rates which the Edison Company gave in their original proposal to the Commission provided for a minimum charge or guarantee of \$30 per kilowatt of *installation*, which was a marked increase over the rates in the old contracts. As a result, the individual who had lamps, motors and apparatus of a total capacity of 100 kilowatts, say, would be obliged to guarantee an annual payment of \$3,000, no matter what amount of current he consumed and no matter whether he used only 20 or 30 kilowatts at any one time. As the total installation of any building or plant is seldom all in use at the same moment, and as the average amount of use has been variously estimated from 30 to 60 per cent. of the total installation, it is evident that a *charge based upon installation and not upon maximum demand would generally be unjust.*

#### INFORMATION INSUFFICIENT.

In the conferences held from time to time with the present and prospective users of breakdown service, the general opinion seemed to be that the charge was prohibitive in most cases and that few could afford to take the service at such a figure. As the Edison Company insisted that it was reasonable, an attempt was made in the investigation to secure sufficient evidence to determine the facts, but it was found that sufficient data were not available. For one should know not merely the ordinary operating costs and fixed charges, but also the frequency with which private plants break down, the amount of current demanded by them and the hours at which it is used. For example, if it were necessary for the supply company to provide plant and equipment for 60 per cent. of the connected load,

the rate would be practically double what it would need to be if only 30 per cent. should be provided. Again, if breakdown consumers generally use current at the time of peak load, the charge should in fairness be much higher than if the current is consumed during the hours when the generating plant is running on a light load.

Neither the Edison Company nor any of the engineers with whom I consulted were able to state definitely what the conditions had been or were likely to be. The New York and Brooklyn Edison Companies submitted certain calculations to support the rates charged, but they were so vague and indefinite that they were most unsatisfactory. The rates have been fixed more or less arbitrarily without a knowledge of the exact facts and of the various elements which determine the cost. To secure the information desirable it would be advisable to place recording instruments on every breakdown connection and to take records for nearly a year, or at least through the coming summer and the following winter, thereby obtaining the facts as to the extremes which a supply company must provide for. Although this will involve considerable expense, the Edison Company has agreed to provide the apparatus and to take the readings under the supervision and direction, if necessary, of the Commission. *As a satisfactory decision of the rate question cannot be made until these records are taken, I recommend that the work be carried out and that the Electrical Engineer of the Commission be instructed to supervise it.*

The method of charging for breakdown service has also been considered. Many consumers have expressed their preference for a plan whereby a certain amount would be paid for each kilowatt hour of current used and another amount for each kilowatt of maximum demand, the latter as a "readiness-to-serve" charge to cover the cost of installing a connection, of providing sufficient plant and equipment to meet the demand and of being ready to supply current the instant the consumer wishes it. Here, again, sufficient data were not available to determine whether such an arrangement should be more satisfactory than the minimum guarantee plan and what the relation should be between the "readiness-to-serve" charge and the current rate. *Consequently, I do not recommend that a change be made at present in the method of charge now in vogue but that a decision be postponed until accurate records have been obtained.*

#### METHOD OF CHARGE.

The general opinion of the consumers, present and prospective, who appeared at the conferences, was that if the Edison Company would recede from its original demand that the guarantee should be based on installation and would accept maximum demand as the base, so that each consumer might determine for himself the amount of service he needed irrespective of installation, and if the Edison Company would agree to take service records under the supervision of the Commission, they would be satisfied to have a final determination of the question of rates and methods of charging go over until the necessary information has been obtained. This suggestion I laid before the Edison Company and urged that it be acceded to. As a result, the company submitted a new proposition (appended hereto) leaving the guarantee practically as originally suggested, but basing it upon maximum demand and allowing the consumer to state his maximum demand. This will mean a large reduction in the guarantee to be given, for if the amount of use at any one moment or at the moment when the consumer wishes to take advantage of the breakdown service does not exceed 30 per cent. of the total installation, the guarantee under the new proposition will be only 30 per cent. of the guarantee under the original offer of the company.

Take a case which is illustrative, although somewhat unusual, of a consumer who appeared before me: His total installation has a capacity of 70 kilowatts. He never has used, he stated, at any one time more than 14 or 15 kilowatts. Under the original proposal of the New York Edison Company, he would have been obliged to give a guarantee of \$2,100 per year. Under the revised plan he will guarantee only a consumption of \$420 or \$450 — a difference of over \$1,650 per annum.

On the other hand, the Edison Company will be protected by a switch specially designed, which will prevent the consumer from using a greater amount of current than he has agreed to pay for, and yet the company will not be required

to provide greater facilities than the consumers have demanded and for which they will pay.

To summarize the results so far obtained, they are:

- (1) *The New York Edison Company will furnish breakdown service to any owner of a private plant who applies for it.*
- (2) *The use of current need not be restricted to certain hours or certain purposes; it may be taken at any time and for any purpose, thereby obtaining not only pure breakdown service but auxiliary service as well.*
- (3) *The consumer may specify the maximum amount of current to be taken at any one moment, regardless of his installation.*
- (4) *The guarantee will be computed not upon installation but upon maximum demand.*
- (5) *The company will place recording devices upon every breakdown connection and take the records under the supervision of the Commission for the purpose of determining a fair charge for service.*

These beneficial results illustrate what may be accomplished under an effective system of public regulation and control.

Respectfully submitted,

(Signed) MILO R. MALTBIE,  
Commissioner.

**MEMORANDUM RE BREAKDOWN SERVICE SUBMITTED BY THE NEW YORK EDISON COMPANY, MARCH, 1908.**

It is understood that breakdown connections shall be furnished to any applicant operating a private plant on the following basis:

(a) A service charge of \$30.00 including the supply of electric current at the best rate of the class will be made for each kilowatt of maximum demand for which the customer may make written request to the Company and which maximum demand is to be the basis of a year's contract.

(b) The maximum demand for which the customer contracts will be controlled by a special "limit service" switch, which will be adjusted so as to allow the customer to use up to the capacity for which he specifically contracts.

(c) It is understood that the load for which a customer contracts will be approximately a "balance load," that is, the load will be taken in approximately equal quantities from each side of the three-wire system.

(d) For each installation of a breakdown or reserve service of a capacity less than ten kilowatts of maximum demand, there will be a charge made of \$75.00 for introducing the special "limit switch" and other protecting devices.

(e) In all instances the customer is to provide incandescent lamps for the original installation and renewals and carbons and trimming and for the maintenance of any arc lamps. The company assumes no responsibility for the installation. It is understood that an allowance is made offsetting the supply of incandescent and arc lamps under each of the wholesale forms of contract; where service is taken under the retain contract, a special reduction of one cent per kilowatt hour will be made in view of the customer relieving the company of the supply and care of incandescent lamps or arc lamps.

(f) The above does not refer to any installation or part of an installation permanently segregated from the private plant and connecting directly and permanently with the service of the company. Such installation may be supplied under direct contract at the best rates obtainable by any other consumer under like conditions, using an equal amount of current.

N. B.—This rate is made experimentally with the privilege of withdrawing the rate if after one year it is found to be unsatisfactory.

**Gas and Electrical Corporations.—Right to charge for service of installing and maintaining pipe or wire connections between mains and consumers' homes.**

\*[Gas and Electric Connections—Transportation Corporations Law, Sections 65 and 68—Conditions may be imposed for furnishing service to premises not within 100 feet of mains—If within 100 feet, owner is required to pay only for installation on his land. In such case, no charge is permissible for repair or maintenance of pipe in street.]

**OPINION OF COUNSEL.**

Hon. MILO R. MALTBIE, Commissioner:

June 8, 1908.

SIR:—Referring to your letter of May 21, 1908, in which you ask certain questions concerning the right of gas and electric companies to charge for service of

\* See footnote, page 9.

## 710 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

installing and maintaining pipe or wire connections between their mains and the consumers' homes, I beg to advise you as follows:

"(1) Has any gas or electric company under the jurisdiction of this Commission the right to make any charge for providing a service connection between the main and the property of a prospective consumer?"

By section 65 of the Transportation Corporations Law, gas-light corporations and electric-light corporations are obliged to supply gas or light to a building or premises *within one hundred feet* of their mains or wires. Not being under obligation to extend their service beyond the one hundred foot line the companies may make conditions before agreeing to give such service, and may therefore charge for service connection to consumers outside the statutory limit.

"(2) If they have in certain cases, have they any such right provided the nearest point of the property lies within 100 feet in a direct line of the nearest pipe, main or duct of the company?"

It must be admitted that the language of the courts in cases involving questions somewhat similar to that now considered might suggest an affirmative answer. But the expressions contained in the reported opinions, referred to below, were not necessary to the proper dispositions of the matters before the court and in my opinion do not preclude independent consideration.

The first part of section 65 of the Transportation Corporations Law provides that upon application of any owner or occupant of a building or premises within one hundred feet of the mains or wires of a gas-light or electric-light corporation, the corporation "shall supply gas or electric light as may be required for lighting such building or premises, notwithstanding there be rent or compensation in arrear, for gas or electric light supplied, or for meter, wire, pipe or fittings, furnished to a former occupant, etc. A penalty is then provided for each day during which the company refuses service,

"provided that no such corporation shall be required to lay service pipes or wires for the purpose of supplying gas or electric light to any applicant where the ground in which such pipe or wire is required to be laid shall be frozen, or shall otherwise present serious obstacles to laying the same; nor unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay the cost of his portion of the pipe or wire required to be laid, and the expense of laying such portion."

Section 68 of the Transportation Corporations Law reads in part as follows:

"§ 68. If any person supplied with gas or electric light by any such corporation shall neglect or refuse to pay the rent or remuneration due for the same or for the wires, pipes or fittings let by the corporation, for supplying or using such gas or electric light or for ascertaining the quantity consumed or used as required by his contract with the corporation, or shall refuse or neglect, after being required so to do, to make the deposit required, such corporation may prevent the gas or electric light from entering the premises of such person."

From a memorandum furnished by Messrs. Beardsley & Hemmens, counsel for the New York Edison Company, it seems that the company bases its claim to a right to charge for service connection on the last three lines of section 65, above quoted, and on the language of the court in the case of Gould vs. Edison Electric Illuminating Company, 29 Misc. 240. The decision in that case, however, was merely that the company had the right to make a minimum charge of \$1.50 per month. Judge Beekman, before whom the case was tried at Special Term, said (page 243):

"The Statute recognizes the right to charge for light consumed, *the cost and expense of laying wires and a rental for wire and apparatus.* (Transportation Corporations Law, art. 6, §§ 66, 68.)"

As no question was before the court as to charging for "laying wires" (service connection) the expression on that point must be taken as *obiter*.

In Moore vs. The Champlain Electric Company, 88 Appellate Division, page 289, an action for penalties had been brought against the company for failure to connect their wires with applicant's premises. The applicant's house was not within one hundred feet of the company's wires used for supplying light for domestic purposes, and no question of paying for service connection was directly involved. Judge Parker, who wrote the opinion, said (page 292):

"The term 'service' pipe or wire, as used in that connection, means the connection from the street main or wire to the house, and usually the expense of laying that is borne by both the company and the owner in proportions agreed upon between them and it is as to that expense that the applicant is required to *advance* his proportion, if the company demand it, before he can insist on gas or light being furnished to him. Evidently this provision does not indicate that any expense in laying *additional mains* is expected to be borne by the company and the applicant. So the provisions of section 66, require the applicant to deposit in advance, if demanded, a reasonable sum for the light furnished or to be furnished for two months, and requires the company to pay interest on such deposit. Such provisions do not throw any light upon the interpretation of the prior section. The money is advanced solely to secure the payment for light to be thereafter used, and has no application to the question whether the mains are already laid or to be thereafter laid."

This case was not cited in the memorandum submitted by Messrs. Beardsley and Hemmens.

In my opinion there is nothing in either of these decisions to deprive the words of the act of their ordinary meaning. The act (sec. 65) provides that the company "shall supply gas or electric light" to applicants. This does not mean that the light shall be left some fifty or sixty feet from the applicant's premises, but that it shall be brought *up* to the applicant's premises. The applicant has no franchise and no right to tear up the street and lay pipes or wires. The wires or pipes when laid in the street belong to the company. On the other hand the company has no right without permission to lay pipes or wires on the applicant's property, and if it does so at his request he should if required bear the expense of the installation on his land. This, I believe to be the only portion of the pipe or wire for which the applicant can be made to pay.

An examination of the opinion rendered by the Attorney-General on April 17, 1908, shows that the view which I take of sections 65 and 68 of the Transportation Corporations Law was taken by him in connection with the petition of the Coney Island Realty and Improvement Company as to service charges by the Brooklyn Borough Gas Company. On September 17, 1907, this same view was taken by my predecessor, Judge Blackmar, in an opinion as to the meaning of sections 65 and 68 of the Transportation Corporations Law.

"(3) After the service has been once provided, have the companies the right to make any charge for maintaining or repairing it, or of turning on gas or current when it has once been cut off?"

In my opinion when the consumer's premises are within one hundred feet of the mains or wires no charge can be made for repairing or maintaining the portion of pipe or wire in the street, or for turning on the current when it has once been cut off. When the premises are more than one hundred feet distant the expenses of installation, repair and maintenance may be the subject of agreement between the parties.

Respectfully yours,  
(Signed)

GEO. S. COLEMAN,  
*Counsel to the Commission.*

## Electrical Conduits.

The chief engineer and superintendent of United States public buildings asked the commission for information as to the following:

1. Under the present system of organization by what companies are the conduits beneath Broadway, say from the United States Court House and Post Office building to the Battery, and beneath Wall street from, say the Sub-Treasury building to Broadway, controlled?

2. Can your commission see any objection to the United States applying for rental, under proper conditions, to any corporation that may control conduits referred to?

3. In the event of said corporation refusing to lease conduits, would your commission have any power in the matter?

4. Would your commission, in the event of the United States being unable to obtain the use of any existing conduit, have any objection to the application to the city of New York and to the Legislature for the right to construct a suitable conduit or conduits, of reasonable size, placing in electrical connection the buildings named at the beginning of this communication?

The matter was referred to the counsel for the Commission, who answered the questions as follows:

### OPINION OF COUNSEL.

"I have received from the secretary copy of letter addressed to the Chairman of the Commission by Mr. Alfred B. Fry, Chief Engineer and Superintendent of United States Public Buildings, asking for information regarding the right of the United States government to use existing conduits or subways under the streets of the city of New York.

"The first question contained in Mr. Fry's letter is as follows:

"Under the present system of organization by what companies are the conduits beneath Broadway, say from the U. S. Court House and Post Office building to the Battery, and beneath Wall street from, say the Sub-Treasury building to Broadway, controlled?"

"By chapter 534 of the Laws of 1884 it was provided that all telegraph, telephone and electric light wires and cables used in any incorporated city of this state having a population of five hundred thousand or over should thereafter be placed under the surface of the streets, lanes, and avenues of said city. Chapter 499 of the Laws of 1885 amended the act of the previous year and provided for the appointment of commissioners of electrical subways. The Mayor, Comptroller and Commissioner of Public Works were authorized and directed to appoint three persons who should be a commission of electrical subways charged with the duty of executing the provisions of the act.

"Commissioners were appointed in accordance with the provisions of this act, and on July 22, 1886, these commissioners entered into a contract with the Consolidated Telegraph and Electrical Subway Company whereby said subways were to be constructed by said company and space therein leased by said company to such persons, firms, or corporations as should desire to operate electrical conductors in any street, avenue or highway in the city of New York.

"On April 7, 1887, a further contract was entered into between said commissioners and said company amending the contract above mentioned. Section IV of this contract provides that space in said subways 'shall be leased by said company to any company or corporation having lawful power to operate electrical conductors in any street, avenue or highway in the city of New York that may apply for the same, including any company or corporation having or which shall acquire lawful power to manufacture, use or supply electricity.'

"On June 25th, 1887, an act was passed (Chap. 718, L. 1887), ratifying and confirming said contracts, and providing that the Board of Commissioners of Electrical Subways together with the Mayor of the City of New York should constitute the Board of Electrical Control which should succeed to all the powers and duties of said Commissioners of Electrical Subways.

"On December 8, 1890, an agreement was entered into between the Consolidated Telegraph and Electrical Subway Company and the Empire City Subway Company in and by which said first mentioned company sold to said second mentioned company its low tension subways,—retaining for itself the high tension subways. A law was afterward passed (Chap. 231, L. 1891) authorizing the separation of these subways as above stated and authorizing the Board of Electrical Control to enter into new contracts with said subway companies providing for such separation. New contracts were entered into accordingly, which contracts are still in full force. Under these new contracts the provisions of Section IV of the contract of April 7, 1887, are left undisturbed, except that the control is divided between the two subway companies above mentioned.

"The answer to the first question is, therefore, that all high-tension subways are controlled by the Consolidated Telegraph and Electrical Subway Company, and all low tension subways are controlled by the Empire City Subway Company, and application should be made to one or both of these companies according to the kind of service desired.

"The second question is:

"Can your Commission see any objection to the United States applying for rental, under proper conditions, to any corporation that may control conduits referred to?"

"I see no objection to the application being made, if the United States has authority in law to receive and use such a franchise.

"The third question is:

"In the event of the corporation refusing to lease conduits, would your commission have any power in the matter?"

"I am of the opinion that the commission has power in a proper case to make an order requiring the corporations mentioned to lease space in their conduits or subways. This power is not granted in so many words, but is fairly to be implied from the powers granted.

"Pub. Serv. Com. L. § 66, sub. 1.

"Pub. Serv. Com. L. § 66, sub. 5.

"Pub. Serv. Com. L. § 4.

"Under subdivision 1 of section 66, above cited, the Commission has 'general supervision' of all conduit companies.

"Under subdivision 5 of that section the Commission has power to examine all such corporations and keep informed as to the methods employed by them in the transaction of their business and see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

"By section 4 it is provided that the Commission shall possess the powers and duties specified in the act and also all powers necessary or proper to enable it to carry out the purposes of the act.

"It is difficult to see how it would be possible for the Commission to carry out the purposes of the act as declared in subdivisions 1 and 5 of section 66 unless it has power to make appropriate orders to that end.

"The fourth and last question is:

"Would your Commission, in the event of the United States being unable to obtain the use of any existing conduit, have any objection to the application to the city of New York and to the Legislature for the right to construct a suitable conduit or conduits, of reasonable size, placing in electrical connection the buildings named, at the beginning of this communication?"

"If the route proposed would not interfere with other necessary subsurface structures and if the United States had authority to receive and use such a franchise in the public streets of the city of New York, there might be no objection to the application on the part of the Commission. This question, however, may be readily determined by the Commission if occasion should arise.

Respectfully yours,

(Signed)      GEORGE S. COLEMAN,  
                            *Counsel to the Commission.*

June 18, 1908.

**Gas Corporations.— Improvements in and inspection of gas meters.**

Hearing Order No. 676.  
Opinion of Commissioner Maltbie.  
Final Order No. 757.  
Final Order No. 758.

In the Matter  
of the  
Hearing on the motion of the Commission on the question of improvements to be adopted by Gas Corporations within its jurisdiction in the particulars hereinbelow mentioned.

ORDER FOR HEARING  
No. 676.  
August 14, 1908.

*It is hereby ordered,* That a hearing be had on the 27th day of August, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, borough of Manhattan, city of New York, and State of New York, as to whether improvements are necessary and should be ordered in the methods employed by gas corporations within the jurisdiction of the said Commission, to improve the service of said gas corporations or best to promote the public interest, protect the public health or protect those using gas, so as to require that

1. No gas meter, after once having been put in use, shall be verified or tested by anyone other than an Inspector of the Public Service Commission, provided the bill is in dispute or complaint has been made regarding the accuracy of the meter.
2. Whenever a gas meter is removed from the premises of any person, a notice shall be given to the consumer by the gas company in a form prescribed by the Commission that such meter has been removed.
3. All gas meters that have been in use for more than seven years shall be removed before November 1, 1908, and all gas meters that have been in use for more than five years shall be removed before January 1, 1909, and the same shall not be again put in use until tested and approved by an inspector of the Commission.
4. Hereafter every gas meter that has been set five years shall be removed within twelve months thereafter and submitted to an Inspector of the Commission for a new test.

All to the end that the Commission may make such order or orders in the premises as shall be proper.

*Further ordered,* That said gas corporations be given at least ten days' notice of such hearing by service upon each of them, either personally or by mail, of a certified copy of this order, and that at such hearing said corporations be accorded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings held August 27th and September 4th.

\* [Gas meters which have been in use for more than seven years should be removed and tested.]

OPINION OF COMMISSION.  
(Adopted October 2, 1908.)

COMMISSIONER MALTBIE:—

"Growing out of the experience of the Commission, and particularly the work of the Bureau of Gas and Electricity which handles the complaints of consumers against the gas companies, an order for a hearing was adopted by the Commission upon August 14th. The formal hearing was held upon August 27th, followed by an informal conference upon September 4th. After hearing the facts presented by the companies it seems advisable to recommend certain modifications of the proposed order, as indicated by the final orders transmitted herewith. The first order, relating to the removal of meters regarding which complaint shall have been made to the companies, will enable the Commission to settle certain complaints which in the past it has been unable to remedy, owing to the removal and repairing of the meter complained of between the time when the complaint was made to the company by the consumer and the date of his application to this Commission for an adjudication of his case. The order virtually provides that pending such an adjudication the meter may not be removed without a test by the Commission, unless a considerable period shall have elapsed during which the consumer has failed to complain to the Commission."

\* See footnote, page 9.

"The other order relates to meters that have been set upon the premises of a consumer for more than seven years. In the hearing order it was proposed that all gas meters having been in use for more than five years should be removed within four months. In each case, of course, the consumer would be furnished with a meter which had the seal of the Public Service Commission upon it.

"It developed at the hearing that the number of meters which had been in place for seven years or more was very much larger than had been expected. Certain of the companies had a small number, but several had an unusually large percentage. Combining the returns for all the companies, it was found that nearly 90,000 had been in place for more than seven years upon June 30, 1908, or approximately eight per cent. of the total number in use. To remove, overhaul and repair all of these meters within a few months would be practically impossible, for the companies do not have the facilities or the men for handling such a large number in a short time and probably could not obtain them without very great expense. In view of all the circumstances, it is my opinion that July 1, 1909, is the earliest date by which the companies could reasonably be expected to remove all of their seven-year meters.

"It also appeared at the hearing that over 111,000 meters, or approximately nine per cent. of the entire number, had been in place between five and seven years. In view of this large number and of the extreme difficulty of removing these meters until the seven-year meters have been taken care of, I have made no recommendation for an order regarding the five-to-seven-year meters. Other public authorities have established the requirement that no meter shall remain continuously in use without examination and repair for more than five years. Some such period should, in my opinion, be established by this Commission; but until the work of overhauling the seven-year meters shall have been well under way, it will be impossible to fix a date at which a lower limit of use can be reasonably established. After a few months have elapsed, this phase of the matter should be again considered, but I have withheld any recommendation at this time."

Orders Nos. 757 and 758 were thereupon issued.

#### ORDER No. 757.

October 2, 1908.

An order known as Order No. 676 having been duly made on the 14th day of August, 1908, that a hearing be had on the question whether certain improvements as hereinafter set forth, in the methods employed by gas corporations within the jurisdiction of the Commission, are necessary and should be ordered, to promote the public interest, preserve the public health and protect those using gas, and the said order having been duly served upon all the gas corporations within the jurisdiction of the Commission, to wit: Astoria Light, Heat and Power Company; Bronx Gas and Electric Company; Brooklyn Borough Gas Company; Brooklyn Union Gas Company; Central Union Gas Company; Consolidated Gas Company; East River Gas Company; Flatbush Gas Company; Jamaica Gas Light Company; Kings County Lighting Company; New Amsterdam Gas Company; New York and Queens Gas Company; New York and Richmond Gas Company; New York Mutual Gas Light Company; Newtown Gas Company; Northern Union Gas Company; Queens Borough Gas and Electric Company; Richmond Hill and Queens County Gas Light Company; Standard Gas Light Company; Westchester Lighting Company and Woodhaven Gas Light Company; and the said hearing having been duly held on the 27th day of August, 1908, and the 4th day of September, 1908, before Hon. Milo R. Maitbie, Commissioner, Mr. W. R. Addicks and Mr. R. A. Carter appearing for the Consolidated Gas Company; Mr. G. W. Doane, President of the New Amsterdam Gas Company; Mr. Charles G. Franklin, President of the Central Union Gas Company; Mr. L. B. Sharp, General Superintendent of the Queens Borough Gas and Electric Company; Mr. W. G. Hoyt, President of the Standard Gas Light Company; Mr. E. H. Rosenquest, representing the Bronx Gas and Electric Company; Mr. Thomas O. Horton, representing the New York and Richmond Gas Company; Mr. W. K. Rosister, Secretary of the Brooklyn Union Gas Company, and also Vice-President of the Flatbush Gas Company, the Jamaica Gas Light Company, the Newtown Gas Company, the Richmond Hill and Queens County Gas Company and the Woodhaven Gas Light Company; Mr. W. C. Besson, representing the New York and Queens Gas Light Company; Mr. W. H. Spear, representing the New York and Queens Gas Company; Mr. W. M. Flock, Secretary of the Kings County Lighting Company; Mr. M. M. Graham, representing the New Amsterdam Gas Company; Mr. A. H. Hall, representing the Central Union Gas Company, and Mr. F. B. Jourdan, Assistant Secretary of the Brooklyn Union Gas Company, also appearing; and the Commission being of opinion after said hearing that the following improvements in the methods employed by gas corporations within its jurisdiction are necessary and should be ordered to promote the public interest, preserve the public health and protect those using gas: It is

*Ordered.* 1. That on or before the 12th day of October, 1908, every gas corporation within the jurisdiction of the Commission shall provide and keep at all of its offices, where complaints have been made regarding its service, a printed notice, a copy of which shall be filed in the office of the Commission, substantially in the form following:

(Name of Company and address.)

To (Name and address of consumer). ...., 190 .

Sir:— Receipt of acknowledgment of your complaint involving the question of the accuracy of the meter on your premises. If you desire this company to test the meter for accuracy of registration, please sign the attached application and return it within ten days. If, however, you desire to have your meter officially tested, application should be made promptly to the Public Service Commission for the First District at its office, 154 Nassau street, New York city. The Commission will make such a test upon the payment of a small fee to cover the actual cost. This fee will be returned to you and collected from the company if the test of the meter discloses that the percentage of inaccuracy equals or exceeds two per cent. to your prejudice. If the meter is found to register slow or less than two per cent. fast this fee will be retained by the Commission.

(Name of company.)

Per .....

(Perforation or rule.)

....., 190 .

To (Name and address of company printed on form).

I hereby request you to exchange and test the gas meter registering gas supplied to my premises at..... (address). ....

(Signature of complainant.)

2. That every gas corporation within the jurisdiction of the Commission shall give to every consumer who requests that his meter be tested, or whose complaint as to the amount of his gas bill is not immediately adjusted to his satisfaction, a copy of said notice, the blanks therein having been properly filled out.

3. That in case a consumer shall have made a complaint, involving the question of the accuracy of his meter, to any gas corporation within the jurisdiction of the Commission, said meter shall not be removed, unless (a) said consumer shall have made application, in the form above provided, to said gas corporation to test his meter; or (b) fifteen days shall have elapsed since said notice shall have been sent to said consumer; or (c) an order from the Commission, directing that said meter be removed for test, shall have been received by said gas corporation.

*It is further ordered,* That this order shall take effect immediately, and shall continue in force for a period of two years.

*And it is further ordered,* That this order is made without prejudice to any other or further order in the premises that the Commission may make.

## FINAL ORDER No. 758.

October 2, 1908.

An order known as Order No. 757 having been duly made by the Commission after a hearing duly had on motion of the Commission, as therein recited, on the question whether improvements in the methods employed by gas corporations within the jurisdiction of the Commission were necessary, which said order directed certain improvements, and also provided that it should be without prejudice to any other or further order in the premises that the Commission might make, and the Commission now being of the opinion that certain other improvements in the methods employed by gas corporations within its jurisdiction are necessary and should be ordered to promote the public interest, preserve the public health and protect those using gas, it is

*Ordered,* That prior to the first day of July, 1909, all gas corporations within the jurisdiction of the Commission remove and submit to the Commission for test, any and all gas meters which shall have been in use for more than seven years; and it is further

*Ordered,* That after the first day of July, 1909, no meter shall be continued in use by any gas corporation within the jurisdiction of the Commission which shall have been in service untested for more than seven years, and no such gas meter shall again be set for use until tested and approved by the Commission; and it is further

*Ordered,* That this order shall take effect immediately and shall continue in force for a period of three years; and it is further

*Ordered,* That this order is made without prejudice to any other or further order in the premises that the Commission may make.

INVESTIGATION INTO THE PROPERTY, FRANCHISES AND OPERATION OF ELECTRIC LIGHTING CORPORATIONS.

Investigation of Property, Franchises and Operation of Electric Lighting Companies.

Order No. 205.  
Opinion of Counsel.

ORDER NO. 205.

January 17, 1908.

Whereas, This Commission has general supervision, among other things, of all persons and corporations having authority under law to erect or maintain wires, conduits, ducts or other fixtures in, over or under the streets, highways and public places in the Counties of New York, Kings, Queens and Richmond, for the purpose of furnishing or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conductors; and for the purpose of properly performing the duties imposed upon it by law, it is necessary to be informed of the methods employed by such companies in manufacturing and supplying electricity for light, heat or power and in transmitting the same, and the methods employed by them in the transaction of their business, and whether their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

*Resolved*, That this Commission do, pursuant to the authority contained in section 66 of the Public Service Commissions Law, investigate and examine into the franchises, property and operations of the electric lighting companies doing business in the city of New York, to wit: New York Edison Company, Brush Electric Illuminating Company, Fleischauer Electric Light & Power Company, United Electric Light & Power Company, West Side Electric Company, Long Acre Electric Light & Power Company, Edison Electric Illuminating Company, Kings County Electric Light & Power Company, Amsterdam Light, Heat & Power Company, Flatbush Gas Company, Westchester Lighting Company, Bronx Gas & Electric Company, New York & Queens Electric Light & Power Company, Queens Borough Gas & Electric Company, Richmond Light & Railroad Company, and also the Consolidated Telegraph and Electrical Subway Company and Empire City Subway Company, Limited, and any other company engaged in the business of producing and selling electricity for light, heat or power and having authority to maintain wires, conduits, ducts or other fixtures in, over or under any streets, highways or public places in the city of New York.

*Further resolved*, That in addition to the investigation into the franchises, property and operations of the said companies, inquiry be made into the methods employed by the companies and each of them with respect to any discrimination in rates and whether such discrimination is undue, unreasonable or unjust; whether contracts are required of customers as a condition to service, and if so, their nature and whether legal, just and reasonable; emergency service and auxiliary or supplemental service; regulations governing the introduction of wires upon the premises of customers and others including the cost and charges therefor; regulations governing the discontinuance of service, and also the price charged for electricity and any regulations governing the same, the kind, condition and accuracy of meters used, the condition of the plants, wires, conduits and services and generally the methods employed by the said corporations in generating and supplying electricity and in the transaction of their business; and into every matter and thing necessary or proper to inform the Commission whether the property of said company is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters, together with any other matter or thing relating to said companies or either of them and subject to the control or supervision of the Commission.

*Further resolved*, That such investigation proceed at such time or times as may be fixed by this Commission or the Commissioner presiding, and that notice of the same be sent to the company or companies affected thereby.

Hearings were held February 26th, March 5th, 7th, 12th, 17th, 18th, 27th, 28th, 30th, April 1st, 2d, 4th, 9th, 14th, 15th, May 14th, 20th, 27th, June 1st, 4th, 5th, 8th, 11th, 15th, 17th, 22d, 26th, July 16th, September 3d, 10th, 25th, October 1st, 14th, 19th, 26th, 30th, November 6th, 9th, 16th, 23d, 27th and December 22d.

# ORDERS OF THE COMMISSION ISSUED IN 1908.

717

## OPINION OF COUNSEL.

*Public Service Commission for the First District:*

September 13, 1908.

GENTLEMEN:—I am in receipt of your communication regarding the complaints made by the Mutual Inspection & Adjustment Company in behalf of Henry Mouquin and of Messrs. Vogler & Vogler, both against the New York Edison Company. The first of these complaints refers to an alleged discrimination in charges, and the second to an arbitrary discontinuance of the electric light connection.

It seems to me that both of these complaints are well founded. It was decided in the case of Armour Packing Company against the Edison Electric Illuminating Company, 115 App. Div. 51, that electric lighting companies are by law under an obligation to furnish service without discrimination in price under similar circumstances and conditions. In that case, the plaintiff sued to recover payments made to the defendant, on the allegation that the defendant was at the same time and under similar circumstances and conditions furnishing electricity to others at a less rate, and upon demurrer the Court upheld the sufficiency of the complaint.

The complaint of Messrs. Vogler & Vogler is also well founded. In Mr. Norton's letter to Mr. Whitney accompanying the complaint, he suggests that a report be made upon the following "fundamental legal points involved:

"(a) The right of the New York Edison Company, a 'monopolistic public service corporation,' to cancel their agreements and disconnect service on thirty days notice, if a customer has paid all bills presented in full."

"(b) The right of the New York Edison Company to increase its rates to customers after contract has been once entered into."

Regarding the first of these propositions, I would report that in my opinion an electrical corporation has no right to cancel and disconnect service arbitrarily, unless the customer is in default of payment of bills duly rendered.

Section 65 of Chapter 566 of the Laws of 1890, known as Chapter 40 of the General Laws, requires that gas companies and electric lighting companies furnish service on demand to persons who apply for it in writing, and whose premises are within one hundred feet of a gas main or electric wire.

Section 66 provides that the lighting companies may require a reasonable deposit to secure the payment for two months service. If the applicant for service is willing to make the deposit, and makes a formal demand, it is the duty of the lighting company to make the connection and furnish the service; and it necessarily follows that such a company is without right to disconnect the service arbitrarily. It seems to me equally plain that they have not the right to require a yearly contract as a condition for making the service, for such a requirement in many instances would practically nullify the provisions of Section 65 of the law above referred to.

I am also of the opinion that the New York Edison Company has no right to increase its rates to customers after contract has once been entered into. The law of 1905 established a maximum of 10 cents per kilowatt hour; but even if the rate established had been an absolute one, contracts theretofore legally made for a less rate would remain binding upon the company. It is elementary that a legislative act cannot impair the obligation of valid contracts already made.

In both of these cases the complainants have a complete remedy in the courts. In the case of discrimination, a suit may be brought under the authority of the Armour Packing Company case above cited, to recover back the excess paid. In the case of disconnection of service, the complainant may make a formal written demand for the connection, and if the company refuses to furnish service he may, under the authority of the section above cited recover a penalty of \$10.00 and \$5.00 for each day during which the refusal continues.

I now consider the power of this Commission in dealing with these complaints. The provisions regarding the supervision and control of gas and electrical corporations are different from those regarding the control of railroads and street railroads. The only provision in the Act for orders against gas and electrical corporations is contained in Section 72. It is there provided that

"The Commission within lawful limits may, by order, fix the maximum price of gas or electricity to be charged by such corporation or person, or may order such improvement in the manufacture or supply of such gas, in the manufacture, transmission or supply of such electricity, or in the methods employed by such person or corporation as will in its judgment improve the service."

It is obvious that these orders are such as refer to the general service and not to the enforcement of the rights of an individual against a corporation in isolated cases.

If it is claimed that a general method exists requiring yearly contracts as a condition to service, an investigation might be ordered under section 72, and if such method is found to exist, it could be prohibited by order. The same might be said of discrimination in service, although the concrete case presented seems to me to be an isolated case which could not be made the basis of a general order.

If the Commission desires, I will frame an order for such investigation.

Yours very truly,

(Signed) ABEL E. BLACKMAR,  
Counsel to the Commission.

## LABOR LAW VIOLATIONS.

**Cranford Company.**— Charges of the Commissioner of Labor against, for alleged violations of the Labor Law.

Hearing Order No. 574.  
Opinion of Commissioner Eustis.  
Final Order No. 602.

In the Matter  
of the  
Charges of the Commissioner of Labor against the  
Cranford Company for alleged violations of the  
Labor Law.

HEARING ORDER No. 574.  
June 12, 1908.

On motion made and duly seconded, it was  
*Resolved*, That the Secretary be directed to forward a copy of the complaint of the Commissioner of Labor to the Cranford Company notifying it that the Commission requests a written answer to the said complaint to be filed within six days, and further notifying the said Cranford Company that a hearing on the said complaint will be held at the rooms of the Commission on the 19th day of June at 3:30 o'clock in the afternoon, at which it will be required to attend and defend itself against the charges presented; and it is further

*Resolved*, That the Secretary be directed to notify the Commissioner of Labor of the action taken by the Commission, and to request him to be present at the hearing, either in person or by a representative, and to offer such evidence as he may deem necessary.

Hearing held June 20th.

\* [Timbermen placing concrete piles and preparing excavations for concrete piles and supports are not technically shorers.]

### OPINION OF COMMISSION.

(Adopted June 26, 1908.)

#### COMMISSIONER EUSTIS:—

A hearing was held on June 20, 1908, at 10 A. M., on the complaint of the Commissioner of Labor that the Cranford Company, the contractor for Section 9-0-3 of the Brooklyn Loop lines, failed to comply with the Labor Law in that it employed men to do shoring work at less than the prevailing rate of wages. The contractor duly answered, and on the hearing was represented by counsel, and the Commissioner of Labor appeared by Mr. William W. Walling, First Deputy Commissioner. It appears that the complaint arose from the work of the contractor in underpinning the buildings along Centre street. The Department of Labor contended that the work was that of shoring buildings, while the contractor contended that shoring property consisted of placing timber struts against the buildings and needling them as a method of support while the buildings were off their foundations, and claims that this work was not done in this manner. The contractor seems to have adopted a novel method of support along this work in that the foundations of the buildings are not disturbed, excavations being made under the buildings, and concrete supports extended thus reinforcing the foundation. For this work timbermen and laborers were used, but the affidavits and reports presented by the Commissioner of Labor establish the fact that where a shorer was employed by the contractor he was in each instance paid the prevailing rate of wages of \$3.50 for a day's work of eight hours. The question therefore resolved itself into one whether timbermen, placing concrete piles and preparing excavations for concrete piles and supports, were technically shorers and therefore entitled to \$3.50 a day. In my opinion the evidence clearly showed that these men were not doing what is generally and usually known as shorer's work, but were doing the work which is usually done by timbermen. This conclusion is also, I think, the conclusion of the Deputy Commissioner of Labor who, after the hearing, agreed that the complaint had not been substantiated, and I think it is

\* See footnote, page 9.

also the conclusion of the City Comptroller's office, which also had a representative present.

I therefore report that, in my opinion, no violation of the Labor Law, as charged, exists, and advise that a resolution be adopted dismissing the complaint.

Thereupon the following dismissal order was issued:

ORDER No. 602.

June 26, 1908.

*Resolved*, That the complaint of the Commissioner of Labor against the Cranford Company, the contractor for Section 9-0-3 of the Brooklyn Loop Lines, be and the same hereby is dismissed upon the merits, and that the Secretary be directed to advise the Commissioner of Labor that after a hearing of all parties concerned, the Commission is of the opinion that no violation of the Labor Law, as charged exists, and that the Secretary advise the Comptroller of the city of New York of the Commission's decision in the premises.

## VIOLATIONS OF ORDERS AND PENALTY SUITS.

### Brooklyn Union Elevated Railroad Company.—Wrecking train at Brooklyn terminal of Brooklyn Bridge.

Hearing Order No. 213.

Opinion of Commissioner Bassett.

Final Order No. 257.

Extension Order No. 280.

Opinion of Commissioner Bassett.

Resolution.

In the Matter

of the

Hearing on the motion of the Commission as to the regulations, practices, equipment and service of the BROOKLYN UNION ELEVATED RAILROAD COMPANY, in the respects hereinafter mentioned.

ORDER FOR HEARING  
No. 213.  
January 21, 1908.

*It is hereby ordered*, That a hearing be had on the 3d day of February, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission at No. 154 Nassau street, borough of Manhattan, city and State of New York, to inquire whether the regulations, practices, equipment, appliances or service of the said company on its line on and across and near the Brooklyn Bridge, in the city of New York, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate, and if it be so found then to determine whether changes in said regulations, practices, equipment, appliances or service, in the particulars following, at the place or places herein mentioned would be just, reasonable, safe, adequate and proper, and whether such changes shall be put in force, observed and used on the line of said company, and also to inquire and determine whether repairs, improvements, changes or additions to or in the tracks, switches, terminals, terminal facilities or other property or device used by said company in the particulars following ought reasonably to be made in order to promote the security or convenience of the public or employees, or in order to secure adequate facilities for the transportation of passengers, freight or property, namely:

Whether said company should be directed to keep and maintain at its terminal yard at or near the Brooklyn terminal of the Brooklyn Bridge a wrecking car or wrecking cars or wrecking train or wrecking trains, to be used by said company in clearing its track upon and near said bridge and opening the same up for transportation in cases of derailments or other accidents on or near said bridge, to the end that the delay in the transportation of passengers, freight or property caused by such accidents shall be as slight as possible, and that the public safety and convenience shall be promoted.

And if such changes, improvements and additions, or any of them, be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same ought to be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered*, That the said Brooklyn Union Elevated Railroad Company be given at least ten days' notice of such hearing, by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity to present evidence and to examine and cross-examine witnesses as to the matters hereinbefore set forth.

Hearing held February 3d.

OPINION OF COMMISSION.

(Adopted February 11, 1908.)

COMMISSIONER BASSETT:—

I was designated to take charge of a hearing regarding the need of a wrecking car at the Brooklyn Bridge terminal of the Brooklyn Union Elevated Railroad Company's lines. There appears to have been about three derailments of elevated cars, one at and the others near the Brooklyn Bridge, during the last four months, to attend to which a wrecking car was sent for. The company keeps two wrecking cars, one at East New York and the other at Thirty-sixth street. For derailments near the bridge the East New York wrecking car is usually sent for. It appears that on each occasion it took about one hour and five minutes for the wrecking car to reach the scene of the accident after its happening. The company is about to install six large boxes of wrecking tools at different places at and in the neighborhood of the bridge, and it is the opinion of the company officials and engineers that tools, jacks, etc., placed at convenient intervals in this way will be more useful than to maintain a wrecking car at the bridge.

On account of lack of head room derricks cannot be erected on the company's wrecking cars, and on this account the cars are not as useful as on ordinary railroads. Special crews are needed and no crews for operation of a wrecking car kept at the bridge would be useful during the intervals between accidents. The cars are kept at present near the shops, so that when word is telephoned to the shop superintendent he can put a crew on the wrecking car and run it to any part of the system. Suitable tools can be placed in the car according to the nature of the accident.

I think it is the fact that a wrecking car is useful in two to five per cent of the elevated railroad accidents. The company officials claim that in the case of the accidents reported by our Inspectors the delay in the wrecking car reaching the scene of the accident did not delay the operation of the road because as rapid progress was being made in replacing the car as would be made if the wrecking car was actually present, and that sometimes the wrecking car is not used when it is sent for. Congestion of the tracks lessens the usefulness of a wrecking car on a crowded elevated railroad because it cannot get by other cars that are usually stalled near the accident. This is especially so on the Brooklyn Bridge.

Notwithstanding these facts, the present operation of the Brooklyn Bridge cars is so dependent upon freedom from accidents and quick removal of stoppages when they occur that even if the presence of a wrecking car at the Brooklyn Bridge is of only slight and occasional benefit, one should, in my opinion, be maintained there. The Brooklyn Bridge problem is so acute that no small economy as to men or materials should stand in the way of the adoption of every possible precaution. If the six large boxes are supplied there certainly must be men kept in the neighborhood of the bridge who are competent to make use of the tools, and I can see no reason why these men, or possibly a few additional mechanics, should not be kept in the neighborhood of the bridge, who can operate the wrecking car. It is my opinion, therefore, that the tool boxes should be installed in accordance with the plans already made and that a wrecking car in repair and ready for use should at all times be kept at or near the Brooklyn Bridge.

Let an order be prepared accordingly.

Thereupon the following final order was issued:

FINAL ORDER No. 257.

February 11, 1908.

This matter coming on upon the report of a hearing held herein on the 3rd day of February, 1908, pursuant to an order of the Commission, No. 213 made

January 21, 1908, and said order having been duly served on the said Brooklyn Union Elevated Railroad Company, and service of said order having been duly acknowledged by said Company, and it appearing that said hearing was held by and before the Commission on the matters embraced and specified in said Order No. 213, Commissioner Bassett presiding and conducting the investigation on behalf of the Commission in person, and Mr. Arthur N. Dutton appearing for said company, and proof having been duly taken upon said hearing, and it appearing therefrom that it would be just, reasonable and proper to direct the said Brooklyn Union Elevated Railroad Company to provide the increased facilities below set forth for removing obstructions to traffic in case of accident, and that the time hereinafter given within which to provide such additional facilities is reasonable.

Now, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered:* 1. That by or before the first day of March, 1908, said Brooklyn Union Elevated Railroad Company instal at or in the immediate neighborhood of the Brooklyn Bridge six large boxes of wrecking tools, consisting of wedges, chains, locks, jacks, ropes, fire extinguishers and such other apparatus as may be needed for use in case of accident and derailment upon the Brooklyn Bridge.

2. That the said company, by or before the 1st day of March, 1908, station at its terminal yard at or near the Brooklyn terminal of the Brooklyn Bridge and keep and maintain there a wrecking car or wrecking train ready for use by said company in clearing its tracks upon and near said bridge, and opening the same up for transportation in cases of derailments or other accidents on or near said bridge. It is further

*Ordered,* That within five (5) days the said Brooklyn Union Elevated Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Upon application of the company the following extension order was issued:

#### EXTENSION ORDER No. 280.

February 21, 1908.

An order of the Commission, No. 257, having been made herein on or about the 11th day of February, 1908, ordering and directing the Brooklyn Union Elevated Railroad Company to instal at or in the immediate neighborhood of the Brooklyn Bridge six large boxes of wrecking tools, on or before the first day of March, 1908, and the said Brooklyn Union Elevated Railroad Company having applied in writing for an extension of such time,

Now, on motion it is

*Ordered,* That the time of the Brooklyn Union Elevated Railroad Company within which to instal the six boxes above mentioned, be and the same hereby is extended to and including the first day of April, 1908.

#### RESOLUTION.

(Adopted April 17, 1908.)

Whereas, the Final Order No. 257 of this Commission, duly made on the 11th day of February, 1908, directed and required the Brooklyn Union Elevated Railroad Company by or before March 1, 1908, to station at its terminal yard at or near the Brooklyn terminal of the Brooklyn Bridge and keep and maintain there a wrecking car or wrecking train ready for use by said company in clearing its track upon and near said bridge; and

Whereas, said Final Order No. 257 was duly served on said company; and

Whereas, said company, on the 13th day of February, 1908, duly acknowledged service of said order and accepted said order and agreed to obey its provisions in regard to the stationing and maintaining of said wrecking car; and

Whereas, said company failed, omitted and neglected to obey, observe or comply with the terms of said Final Order No. 257, and failed to station or maintain any wrecking car or wrecking train at said terminal by or before the 1st day of March, 1908; and

Whereas, such violation of said order continued over each and every day to and including the 18th day of March, 1908, and still continues;

*Therefore be it resolved,* That the Counsel to the Commission be authorized and directed to commence an action in a court of competent jurisdiction in the name of the People of the State of New York, to recover from the said Brooklyn Union Elevated Railroad Company a fine, penalty or forfeiture of fifty dollars (\$50.00) for each day from the 2nd day of March, 1908, to the 16th day of March, 1908, inclusive, and to prosecute said action to final judgment.

\* [Where violation of an order is due to mistake on the part of the company and the order has since been complied with, an action brought to recover the penalty for the violation should be discontinued.]

#### OPINION OF COMMISSION.

(Adopted May 26, 1908.)

COMMISSIONER BASSETT:—

On February 11, 1908, the Commission made final order No. 257 directed to the Brooklyn Union Elevated Railroad Company and duly served the same upon it.

\* See footnote, page 9.

The order required among other things that the company should station at or near the Brooklyn terminal of the Brooklyn Bridge a wrecking car or wrecking train ready for use by said company. On the 13th day of February, 1908, the said company duly acknowledged the service of said order, accepted the same and agreed to obey its provisions. Under the provisions of the order certain tool boxes were to be put in position near the bridge on or before March 1, 1908, and the same date was fixed for placing the wrecking car. At the same time that the company accepted the order it asked for an extension of time for placing the tool boxes. On February 21, 1908, the commission adopted extension order No. 280, extending the time of the company to install the tool boxes to and including the 1st day of April. The date for the placing of the wrecking car was not altered and remained March 1st. The company failed to comply with that part of the order which required the wrecking car to be placed at the bridge terminal, but on March 16th applied for an extension of time within which to comply with the portion of the order relating to the wrecking car. As the company was then in default in this regard it was deemed right that no extension should be made. The Commission does not consider that it is any part of its duty to bring it to the attention of public service corporations that the time has expired within which they should comply with its orders, intending that companies should accept full responsibility for defaults. Action was thereupon taken by the Commission, declaring the company to be in default for non-compliance with the order regarding the wrecking car and directing counsel to institute an action for the penalty under the law for those days that the company was clearly in default: i.e., from March 1, 1908, to March 16, 1908. The Commission further directed counsel to communicate to the company his intention of bringing an action in order that the company might present such excuses as it wished. As soon as the company learned of the action of the Commission it complied with the order by immediately placing a wrecking car at the bridge terminal, showing that it was not wilfully resisting the order. The company has also admitted that the car has been of service in its present position and that earlier noncompliance was due to a misapprehension on its part. The following letter was in due course received from the company:

April 24, 1908.

"Replying to your favor of the 21st instant, in which you kindly suggest that any statement we have to make respecting the resolution adopted by the Public Service Commission for the First District on April 17, 1908, directing Counsel to the Commission to commence an action against the Brooklyn Union Elevated Railroad Company to recover a fine for failure to comply with the terms of final order to station or retain a wrecking car at or near the Brooklyn terminal of the New York and Brooklyn Bridge, should be verified, I beg to submit the following:

"The order of the Public Service Commission above referred to specified, in paragraph 1, six large tool boxes of wrecking tools, and in paragraph 2, a wrecking car or wrecking train, both to be installed as of the 1st day of March, 1908.

"As to the tool boxes, an extension was granted to April 1st, and it was mistakenly assumed by this company that the extension of time applied also to the wrecking car. It was under this assumption that my letter under date of April 14th was written to the Commission, suggesting that the time of the order taking effect be further postponed to May 1st, owing to the condition of yard and tracks at the Brooklyn Bridge terminus, from reconstruction work going on at that point, and there being no suitable standing room for the car.

"No reply to this communication being received from the Commission, it was further assumed that the Commission agreed with the management on this point and assented to the suggestion.

"An examination of the record shows that the management was mistaken in its understanding that order of the Commission deferring the date of placing the tool boxes included the car, and that it was not in fact warranted in this assumption, aside from the bare fact that certain physical conditions rendered the storage of the car at that point for the time being impracticable.

"The sum of the case is simply this — the management of the company was in error, and that without the least intention to deviate from the expressed wishes and order of the Commission, it was led into the commission of a technical offense, which should not have occurred.

"We regret the circumstances, for which no excuse can be offered other than the foregoing. We trust that the Commission itself will not deem us chargeable with any spirit of indifference to their orders, which at all times in the past we have endeavored to fully comply with."

Under all the circumstances and inasmuch as the wrecking car was immediately placed at the bridge terminal when the company learned that it was

considered to be in default, and inasmuch as non-compliance with the order was caused by mistake and misapprehension on the part of the company, I recommend that the resolution of the Commission directing that the counsel bring an action for the penalty be rescinded.

\*Thereupon the following resolution was adopted:

*Resolved*, That the resolution passed April 17, 1908, directing the counsel to begin action against the Brooklyn Union Elevated Railroad Company to collect the penalty incurred by it by reason of its non-compliance with Final Order No. 257 be, and the same hereby is, rescinded.

May 26, 1908.

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**Coney Island and Brooklyn Railroad Company.— Overhauling  
and repair of cars.**

Opinion of Commissioner Bassett.  
Opinion of Commissioner Bassett.  
Final Order No. 238.  
Resolution.  
Hearing Order No. 828.  
Opinion of Commissioner Bassett.

**OPINION OF COMMISSION.**

**COMMISSIONER BASSETT:**—

"I have a final order that I should like to propose. The Coney Island and Brooklyn Railroad Company, operating between the bridge and Coney Island, and the lines on DeKalb and Franklin avenues, in Brooklyn, occasioned great complaint last summer by reason of their poor summer open-car equipment. It appeared that in crossing over the bridge, although this road had 16 per cent. of the cars that went over, about half of the, blown-out fuses and stoppages on that account were due to this road, showing a very disproportionate amount of accidents that held up traffic on the bridge. The open cars are now unused, and this order was issued in order to compel this company in the months intervening between now and next summer to run their entire open-car equipment through the shops, to put on gear pans, to put on new circuit breakers, and a number of other items that are specified here. The order requires that this work shall be done by April 15.

Thereupon final order No. 134 was issued December 4, 1907. Upon application of the company a rehearing was granted upon which Commissioner Bassett wrote the following opinion:

**OPINION OF COMMISSION.**  
(Adopted February 4, 1908.)

**COMMISSIONER BASSETT:**—

In the matter of the hearing on the motion of the Commission on the question of improvements in and additions to the equipment of the Coney Island and Brooklyn Railroad Company. Matter of rehearing on portion of order entered December 4, 1907, No. 134.

Among the requirements in Order No. 134 was the following:

"That said company by or before the said 15th day of April, 1908, provide and equip all of said open cars with two (2) new automatic circuit breakers of sufficient capacity and modern type."

The operating company asked for a rehearing upon this item, which was granted by Order No. 166. Hearings have been held and further testimony taken. The company does not deny the propriety of equipping all of its said cars with two modern automatic circuit breakers, but claims that it can operate all of its open

cars so that the effective automatic circuit breaker shall be over the motorman's head, and that this, although somewhat inconvenient for the operating company, yet gives every protection to the public and prevents delays as fully as if two modern automatic circuit breakers were placed upon each car. In other words, they claim that the present expense of purchasing two new circuit breakers for each open car is not now necessary.

The open cars of this company caused a great deal of delay on the Brooklyn Bridge in the summer of 1907, because of fuse blow-outs. An examination of these cars showed that some had no automatic circuit breakers whatever, and that some had only one automatic circuit breaker, instead of two, which is the modern practice. The function of a circuit breaker is to cut off the electric current when for any reason the volume becomes too great, thus preventing the burning out of the fuse. When the current is cut out by the circuit breaker all that is necessary for the motorman to do is to throw a handle located above his head, whereupon the current immediately is restored and the car proceeds without delay. If, however, there is no circuit breaker, the fuse blows out and a new one must be inserted before the car can go on. This causes a substantial delay. If the operating circuit breaker is not above the motorman's head there are two drawbacks: One is that the conductor or motorman must go to the back platform and throw the handle, and the other is that the noise, and sometimes flame, that occurs when the current throws the breaker is apt to frighten passengers that may be standing on the rear platform. On these accounts good practice requires two automatic circuit breakers on each car, so that the one that is operative may always be above the front platform. The operating company show that many of their open cars are operated with loop terminals, and that they can always have the circuit breaker in the front of such cars. This is probably the fact, although there is some evidence to show that it is not well to operate cars continuously in the same direction on account of uneven wear upon motors and gears. This particular company appears to have been remiss for some time past in the upkeep of its rolling stock, and now finds it difficult to comply with all modern requirements in a few months' time. On this account I am inclined to look with favor on a modification of the existing order, so that the equipment of part of the open cars with modern automatic circuit breakers may be postponed until the summer of 1908. I have come to the conclusion, therefore, that the order should make the following provisions:

That said company by or before the 15th day of April, 1908, provide and equip all of the said open cars in service that operate into a switchback terminal with two automatic circuit breakers of modern type and connect such circuit breakers in multiple on each such car, and at all times maintain both the said circuit breakers on each such car in good and perfect repair and keep the same properly adjusted for the capacity of the motors of the cars on which they are placed, and that the circuit breaker over the motorman's head shall at all times be the one operative.

That said company by or before the 15th day of April, 1908, provide and equip all of the rest of its open cars in service with at least one circuit breaker of modern type and at all times maintain the said circuit breaker in good and perfect repair and keep the same properly adjusted for the capacity of the motors of the car on which it is placed, and that the car shall at all times be operated so that the said circuit breaker shall be above the motorman's head.

That said company by or before the 15th day of April, 1908, provide and equip all of its open cars in service with two automatic circuit breakers of modern type and connect such circuit breakers in multiple on each car, and at all times maintain both the said circuit breakers on each car in good and perfect repair and keep the same properly adjusted for the capacity of the motors of the car on which they are placed, and that the circuit breaker over the motorman's head shall at all times be the one operative.

Let an order be prepared accordingly.

Thereupon the following final order was issued:

In the Matter  
of the

Hearing on the motion of the Commission on the  
question of improvements in and additions to the  
equipment of the CONEY ISLAND AND BROOK-  
LYN RAILROAD COMPANY.

ORDER No. 238.  
February 4, 1908.

Matter of rehearing on portion of Order No. 134,  
entered December 4, 1907.

An order having been made and filed herein the 4th day of December, 1907, being Order No. 134, under and pursuant to an order for hearing made the 13th day of November, 1907, being Order No. 88, and said Order No. 134 having been duly served upon the Coney Island and Brooklyn Railroad Company, and said Coney Island and Brooklyn Railroad Company having accepted said Order No. 134 in part, but having applied in writing to this Commission for a modification of paragraph numbered (2) of said Order No. 134, and an order having been made and filed the 20th day of December, 1907, returnable December 31, 1907, being order No. 166, which directed a rehearing on the matters contained in said paragraph numbered (2) of said Order No. 134, and, it appearing that said rehearing was duly held by and before the Commission on the matters in said Order No. 166 specified on the 31st day of December, 1907, and by adjournment duly had on the 14th day of January, 1908, and by adjournment duly had on the 15th day of January, 1908, Mr. Commissioner Bassett presiding, and proof being taken, and Grosvenor H. Backus, Esq., appearing for the Commission, and John J. Kuhn, Esq., appearing for the railroad company.

Now, it being made to appear after the proceedings upon said rehearing that it is just, reasonable and proper that said Order No. 134 should be modified in the manner hereinafter set forth,

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered*, That paragraph numbered (2) of said Order No. 134, made the 4th day of December, 1907, be, and the same hereby is, modified so as to read as follows:

"(2) That said company by or before the 15th day of April, 1908, provide and equip all of its open cars that are to operate into a switch-back terminal with two automatic circuit breakers of modern type, and connect such circuit breakers in multiple on each such car, and at all times maintain both the said circuit breakers on each such car in good and perfect repair and keep the same properly adjusted for the capacity of the motors of the cars on which they are placed, and that the circuit breaker over the motorman's head shall at all times be the one operated.

"That said company by or before the 15th day of April, 1908, provide and equip all the rest of its open cars with at least one circuit breaker of modern type and at all times maintain the said circuit breaker in good and perfect repair and keep the same properly adjusted for the capacity of the motors of the car on which it is placed, and that the car shall at all times be operated so that said circuit breaker shall be above the motorman's head.

"That said company by or before the 15th day of April, 1908, provide and equip all of its open cars with two automatic circuit breakers of modern type and connect such circuit breakers in multiple on each car and at all times maintain both the said circuit breakers on each car in good and perfect repair and keep the same properly adjusted for the capacity of the motors of the car on which they are placed, and that the circuit breaker over the motorman's head shall at all times be the one operated."

*And it is further ordered*, That except as to the portion hereinbefore modified, said Order No. 134 shall remain in full force and effect until modified by the further order of this Commission.

*And it is further ordered*, That this order shall take effect immediately.

*And it is further ordered*, That within five days the said Coney Island and Brooklyn Railroad Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

On motion of Commissioner Bassett the following resolution was adopted:

Whereas, Final Order No. 238 of this Commission duly made on the 4th day of February, 1908, directed and required the Coney Island and Brooklyn Railroad Company by or before the 15th day of April, 1908, to equip all of its open cars so that they could at all times be run with an automatic circuit breaker of modern type in operation over the motorman's head and to run said open cars with such an automatic circuit breaker of modern type in operation over the motorman's head; and

Whereas, said Final Order No. 238 was duly served on said company; and

Whereas, said company on the 13th day of February, 1908, duly acknowledged service of said order and accepted said order and agreed to obey its provisions; and

Whereas, said company has failed, omitted and neglected to obey, observe or comply with said Final Order No. 238, and has failed in at least fifteen instances

to equip said open cars as directed in said order and to run the same with an automatic circuit breaker of modern type in operation over the motorman's head;

Therefore, be it

*Resolved*, That the Counsel to the Commission be and hereby is authorized and directed to commence an action or actions against the said Coney Island and Brooklyn Railroad Company to recover all forfeitures and penalties incurred for said violations of said Order No. 238, and to prosecute the same to final judgment pursuant to the provisions of the Public Service Commissions Law.

June 26, 1908.

In the Matter  
of the

Hearing on the motion of the Commission on the question of compliance by the CONEY ISLAND AND BROOKLYN RAILROAD COMPANY with the requirements of Order No. 134 of the Public Service Commission for the First District as modified by Order No. 238 of said Commission, with respect to the equipment and operation of cars with automatic circuit breakers.

HEARING ORDER No. 828.  
November 10, 1908.

*It is hereby ordered*, That a hearing be had on the 19th day of November, 1908, at 3:00 o'clock in the afternoon, or at any time or times to which the same may be adjourned at the rooms of the Commission, No. 154 Nassau street, in the borough of Manhattan, city and State of New York, on the question of compliance by the Coney Island and Brooklyn Railroad Company with Orders No. 134 and 238 of this Commission in respect to the equipment and operation of cars with automatic circuit breakers.

Hearing held November 19th.

OPINION OF COMMISSION.  
(ADOPTED DECEMBER 29, 1908.)

COMMISSIONER BANSETT:—

An action having been brought in the Supreme Court, Kings county, by the counsel to the Commission in the name of the People of the State of New York against the Coney Island and Brooklyn Railroad Company to recover penalties for fifteen violations of Order No. 134 of the Commission as modified by Order No. 238, the railroad company applied to the Commission to discontinue said action on the ground that the violations had been unintentional and unavoidable. Upon that application the Commission issued Order No. 828 for a hearing on the question of the company's compliance with Orders Nos. 134 and 238. It is conceded by the company that the company in fifteen separate instances violated the order of the Commission in operating cars without an automatic circuit breaker over the motorman's head. This was a direct violation of the main purpose and of the express provision of Order No. 134 as modified by Order No. 238. These orders were adopted after a hearing in which the question of proper equipment and operation of trolley cars in the matter of circuit breakers was considered at length; and it was made plain in the course of that hearing that the policy of the Commission was to eliminate delays and to bring about increased safety of operation by having the cars of the defendant company equipped with circuit breakers in accordance with the usage adopted on well operated roads.

The excuse of the company is that special circumstances had required the company to switch back cars in the middle of their run, which ordinarily ran around the loop, and that this deviation from their regular schedule of operation was caused by blocks on the line or other unavoidable circumstances and was made in the interest of the traveling public. The company states that it has been found impracticable and impossible to operate all of its cars on any route around loops without fail and that in consequence of this fact the company has equipped all of its cars with two automatic circuit breakers so that hereafter it will be possible to carry out the order of the Commission in this respect.

The company is censurable for the manner in which its operating expert misled the Commission, and further for its failure to advise the Commission when it found it impracticable to operate its cars in strict compliance with the terms of the Commission's order. The Order No. 238 modifying Order No. 134 took effect

on the 4th day of February, 1908, and required the company to complete the equipment of its cars so as to carry out the order by or before April 15, 1908. The particular violations which were observed by the Commission's inspectors occurred on April 20, 1908, two weeks after the order was fully in force.

It appears from the evidence on the present hearing that the officials of the company instructed their subordinates to comply with the terms of the Commission's order and it is claimed that the only departures from the order were in cases where blocks on the line or other exigencies of traffic conditions required the cutting out and turning back of its cars in the middle of a run. It also appears from the evidence that when the company discovered that it would be impracticable at all times to comply with the terms of the order without a more extensive addition to their equipment than had at first been contemplated, the company gave orders to have *all* its cars equipped with two automatic circuit breakers and that for some time past the company has been operating all of its cars with such equipment.

In view of this provision by the company in excess of the requirements of the order, I recommend the adoption of a resolution authorizing the counsel to the Commission to consent, subject to the approval of the court, to the discontinuance of the action which has been brought to recover penalties under Order No. 134 as modified by Order No. 238.

The following resolution was thereupon moved and duly seconded:

Whereas, by direction of the Commission the Counsel to the Commission has brought an action in the Supreme Court, Kings county, in the name of the People of the State of New York against the Coney Island and Brooklyn Railroad Company, to recover penalties for violations by said company of Order No. 134 of this Commission, as modified by Order No. 238; and

Whereas, it appears after a hearing that the officers of the said company instructed their employees to comply with the terms of said order; and that the said violations were caused by lack of foresight and errors of judgment, without intent to disregard the terms of said order; and

Whereas, it appears further after said hearing that said company has of its own initiative expended a considerable sum of money in the installation of equipment in excess of that required by the terms of said order, and has done so for the purpose of assuring at all times compliance with said order;

Now, therefore, on motion duly made and seconded, it is

*Resolved*, That the Counsel to the Commission be and he hereby is authorized and directed to make a stipulation with said Coney Island and Brooklyn Railroad Company for the discontinuance of said action, without costs, subject to the approval of the court having jurisdiction of the same.

The resolution was adopted December 29, 1908.

## RECEIVERS.

\* [Receivers appointed by Federal Court are subject to the orders of the Commission.]

It is the duty of such receivers to render annual reports and they are subject to penalty for default.

Mandamus will lie to enforce this duty.]

Various questions came up in connection with the operation of the street railroads in Manhattan by Federal receivers and the counsel to the Commission rendered opinions as follows:

### OPINION OF COUNSEL.

March 21, 1908.

Hon. WILLIAM R. WILCOX, *Chairman*:

SIR:—Referring to your letter of March 9th, asking for my opinion as to the binding effect of the Commission's orders directed to the receivers of the New York City Railway Company and of the Third Avenue Railroad Company, I beg to advise you as follows:

These receivers were appointed in causes pending in the United States Circuit Court, and, under United States Statutes, section 721, Act March 3, 1887, Ch. 373, sections 2, 3 (as amended 1888), the receivers must manage and operate the property according to the requirements of the Public Service Commissions Law, which is one of the valid laws of the State within the meaning of that act.

\* See footnote, page 9.

## 728 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

It does not follow, however, that the receivers are in every respect subject to the orders of the Commission, for it is true that the possession of the receivers is the possession of the court, and their possession must not be interfered with by the State courts, by the State Legislature or by a State Commission without leave of the Federal Court that appointed the receivers.

The decisions of the courts in interpreting the act of March 3, 1887, as amended, recognize clearly the distinction between the duty of the Federal receivers to *manage* and *operate* the property pursuant to State laws, and the duty of the Federal receivers to *keep possession* of that property. State Statutes that prescribe how the property shall be operated, have been enforced. State Statutes giving State officers power to *remove* property from the receivers' possession have not been enforced.

In the case of Erb vs. Morasch, 177 U. S. 584, the Supreme Court of the United States held it to be the duty of the Federal receivers to operate the railroad according to State laws, and upheld a city ordinance limiting the speed of trains operated by Federal receivers. In the Matter of Tyler, 149 U. S., 164, the same court held that property in the possession of Federal receivers is not subject to seizure and levy under process issuing from State court to enforce collection of State tax.

The order of your Commission prescribing safe, adequate and reasonable methods of operation are, in my opinion, binding upon the receivers, as are all orders calling for increase in the number of cars operated. An order of your Commission, the effect of which was to take property out of their hands, would not be upheld unless the Federal Court approved its enforcement. The mere fact that the Commission's order would cause the expenditure of money is not a sufficient reason for refusal by the receivers to obey the Commission's orders.

An order to repair cars is to a certain extent an interference with receivers' possession, but I believe it would be upheld as made pursuant to a State law governing the management and operation of the railroad and which did not take the property out of the receivers' possession. If, however, your order directed the receivers to send a number of cars back to the manufacturers for overhauling, I believe the order could not be enforced as it would take the property out of the hands of the receivers.

Having outlined the effect of orders of the Commission directed to the receivers on the assumption that the Federal Court had given no instructions to the receivers, it now remains to inquire what action has been taken by the Federal Court.

On October 8, 1907, upon application made by the receivers of the New York City Railway Company for instructions, Circuit Judge Lacombe, in Pennsylvania Steel Company vs. New York City Railway Company, 157 Fed. Reporter, 440, at 445, said:

"The controlling element in the operation of the property by the receivers will be the circumstance that such property is devoted to the public service. The traveling public are to be first considered: the service already performed by the roads must be kept up, and improved upon so far as may be. In the matter of improvements the receivers are fortunately relieved—at least in part—from the burden of devising improvements in the system, by the existence of the Public Service Commission. That body is making a careful and exhaustive investigation into all such questions, and may prescribe various changes in construction, equipment, or operation devised and adapted to secure better service. These directions of the Public Service Commission will be carried out by the receivers so far as the income from operating the roads will permit; whether they should also undertake to borrow money in order to complete such changes is a question which can be determined subsequently when it is known just what those changes are. The receipts from car service will be devoted, first, to maintenance, including all necessary repairs and replacements so as to avoid breakdown at any point, and to operation, including not only employees, materials, and supplies, but also the adjustment of all claims arising by reason of such operation, and the obligations due to the state or municipality for percentage of gross receipts, taxes, etc., and the necessary expenses of the receivership."

The effect of this instruction is to lend force to the Commission's orders and I believe that under this instruction the receivers would be unable successfully to resist an order even though it removed property from their possessions, unless new instructions were given to meet that situation. I have prepared a memorandum of authorities bearing on the question, which is on file in this office and available at any time.

For your convenience, I send you a copy of the Federal enactment of March 3, 1887, as amended.

Respectfully yours,  
(Signed) GEO. S. COLEMAN,  
Counsel to the Commission.

[As to the filing of reports by receivers, see opinion of counsel under date of October 29, 1908, published herein on page 274].

## LOCOMOTIVE BOILER TESTS.

\*[As the expenses of the First District Commission are paid by the city and of the Second District Commission by the State, it is inadvisable to have locomotive boilers in the First District tested and inspected by inspectors of the Second District.]

Sections 49a and 49b of the Railroad Law provide for the inspecting and testing of locomotive boilers by an inspector to be appointed by the Railroad Commission. Upon the creation of the Public Service Commissions they succeeded to the powers of the Railroad Commission. The Second District Commission sent the following communication:

## LETTER OF CHAIRMAN STEVENS.

ALBANY, September 8, 1907.

Hon. WILLIAM R. WILLCOX, Chairman, Public Service Commission, First District, Tribune Building, No. 154 Nassau Street, New York City:

DEAR SIR:— We inclose copies of Circulars 12, 13 and 14, and Forms 1 and 2, in relation to the inspection, testing and washing of locomotive boilers.

We note that this class of work is almost entirely confined to the Second District, there being 5,500 locomotive boilers to inspect in this district and only about 40 in the First District, divided as follows:

The following companies operate locomotives in both districts:

Delaware, Lackawanna and Western Railroad Company;

New York Central and Hudson River Railroad Company;

Long Island Railroad Company;

New York, New Haven and Hartford Railroad Company.

The following roads operate wholly in the First District:

Brooklyn Elevated Union Railroad Company, 7 locomotives;

Interborough Rapid Transit Company, 2 locomotives;

Staten Island Rapid Transit Railway Company, Staten Island Railway Company, Baltimore and New York Railway Company, 30 locomotives.

We have received some requests from the railway companies involved, asking whether reports are to be made to the First or Second District Commission, and we would like to have your suggestion as to the best method of handling the subject. There are so few locomotives operating in your district that our inspector can easily handle them for you without extra expense. It occurs to us that a satisfactory method would be to have the State Boiler Inspector, Mr. G. P. Robinson, report to your Commission regarding locomotives in the First District, as you may not care to engage a separate inspector for the small amount of work involved.

We will, of course, be glad to co-operate cordially with you in any direction you may suggest.

Yours very truly,

(Signed) F. W. STEVENS,  
Chairman.

Chairman Willcox, on behalf of the Commission, made the following reply thereto:

## LETTER OF CHAIRMAN WILLCOX.

September 6, 1907.

Hon. F. W. STEVENS, Chairman, Public Service Commission for the Second District, Albany, N. Y.:

DEAR SIR:— We thank you for your cordial letter of September 3d, suggesting that Mr. G. P. Robinson, the inspector now in the employ of your Commission, might inspect, without expense, the few steam locomotive boilers within the jurisdiction of our Commission. We have gone over this matter carefully. While our first impulse was to accept your suggestion, it occurred to us, on consideration, that we should submit these considerations to you.

\* See footnote, page 9.

## 730 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

The expenses of our Commission are paid by this city, whereas those of your Commission are paid by the State. If we should adopt, without payment, the services of any of your employees a large amount of criticism might be made upon a very small matter. We could, of course, pay the inspector for his time given to our work, but possibly the bookkeeping involved in doing this would be more trouble than the advantage. Undoubtedly your Commission will be much better equipped to do this work than we will be.

Kindly consider this suggestion in the same spirit that it is offered. After a little we may find that none of our force can make proper locomotive boiler inspections, and in that case we will communicate with you again.

It would be a favor if Mr. Robinson would call at this office some time when in the city, in order that we might go over the matter with him.

Again thanking you for your courtesy, I am,

Yours very truly,

(Signed) WILLIAM R. WILLCOX.

Chairman.

\*[The statute for testing locomotive boilers does not apply to boilers on locomotives used by a company not incorporated under the Railroad Law.]

The question arose as to whether under sections 49a-49c of the Railroad Law the locomotive boilers of the New York Dock Company were subject to inspection and test. The matter was referred to the counsel to the Commission for his opinion and he rendered an opinion as follows:

### OPINION OF COUNSEL.

April 15, 1908.

*Public Service Commission for the First District:*

Sirs:—Referring to the opinion dated February 13, 1908, relating to the powers and duties of the Commission in regard to the inspection and testing of the boilers on locomotives used by the New York Dock Company, which opinion indicated that the Commission had jurisdiction of the matter mentioned, I beg to say that upon further consideration I have reached the conclusion that the jurisdiction of the Commission does not extend so far.

It appears that the New York Dock Company is not incorporated under the Railroad Law of the State. The company is engaged in the business of warehousemen. Incidental to its business it operates small locomotives exclusively on its own property. These locomotives never leave the tracks of the company and have no connection with any other railroad. The company was incorporated in 1901. The question presented is whether this company's line is a railroad within the meaning of the statute providing for the inspection and testing of locomotive boilers and within the meaning of the Public Service Commissions Law.

Whatever powers the Public Service Commission has in the matter of inspecting and testing locomotive boilers it possesses as the successor of the Board of Railroad Commissioners under section 80 of the Public Service Commissions Law which is as follows:

“On and after the taking effect of this act the board of railroad commissioners shall be abolished. All the powers and duties of such board conferred and imposed by any statute of this state shall thereupon be exercised and performed by the public service commissions.”

The powers and duties of the Board of Railroad Commissioners in the matter of the inspection and testing of locomotive boilers are prescribed by the Railroad Law.

The Railroad Law was passed in 1890. As originally enacted, it contained no provision for the inspection and testing of locomotive boilers. By chapter 611 of the Laws of 1905, this law was amended by the addition of sections 49-a and 49-b providing for such inspection and testing and defining the powers and duties of the Board of Railroad Commissioners with respect thereto. In 1907, by chapter 208, which became a law on April 25, 1907, section 49-a was amended and an additional section (49-c) was added, making the present reading of all three sections as follows:

“§ 49-a. INSPECTION OF LOCOMOTIVE BOILERS.—It shall be the duty of every railroad corporation operated by steam power, within this state, and of the directors, managers or superintendents of such railroad to cause thorough inspections to be made of the boilers and their appurtenances of all the steam locomotives which shall be used by such corporation or corporations on said railroads. Said inspections shall be made, at least every three months under the direction and superintendence of said corporations, or the directors, managers or superintendents thereof, by persons of suitable qualifications and attainments to perform the services required of inspectors of boilers, and who from their knowledge of the construction and use of boilers and the appurtenances therewith connected, are able to form a reliable opinion of the strength, form, workmanship and suitableness of boilers, to be employed with-

\* See footnote, page 9.

out hazard of life, from imperfections in material, workmanship or arrangement of any part of such boiler and appurtenances. All such boilers so used shall comply with the following requirements: The boilers must be made of good and suitable materials; the openings for the passage of water and steam respectively, and all pipes and tubes exposed to heat shall be of proper dimensions; the safety valves, fusible plugs, low water glass indicator, gauge cocks and steam gauges, shall be of such construction, condition and arrangement that the same may be safely employed in the active service of the railroad corporation without peril to life; and each inspector shall satisfy himself by thorough examination that said requirements have been fully complied with. No boiler, nor any connection therewith shall be approved which is unsafe in its form, or dangerous from defects, workmanship or other cause. The person or persons who shall make the said inspections if he or they approve of the boiler or boilers and the appurtenances throughout, shall make and subscribe his or their name to a written or printed certificate which shall contain the number of each boiler inspected, the date of its inspection, the condition of the boiler inspected, and such details as may be required by the forms and regulations which shall be prescribed by the railroad commissioners. Every certificate shall be verified by the oath of the inspector, and he shall cause said certificate or certificates to be filed in the office of the railroad commissioners, within ten days after each inspection shall be made, and also a copy thereof with the chief operating officer or employee of such railroad having charge of the operation of such locomotive boiler; a copy shall also be placed by such officer or employee in a conspicuous place in the cab connected with the locomotive boiler inspected, and there kept framed under glass. The railroad commissioners shall have power, from time to time, to formulate rules and regulations for the inspection and testing of boilers as aforesaid, and may require the removal if incompetent inspectors of boilers under the provisions of this act. Copies of such rules and regulations shall be mailed to every corporation operating a railroad by steam in this state. If it shall be ascertained by such inspection and test or otherwise, that any locomotive boiler is unsafe for use, the same shall not again be used until it shall be repaired, and made safe, so as to comply with the requirements of this section. Every corporation, director, manager or superintendent operating such railroad and violating any of the provisions of this section shall be liable to a penalty, to be paid to the People of the State of New York, of one hundred dollars for each offense, and the further penalty of one hundred dollars for each day it or they shall omit or neglect to comply with said provisions, and the making or filing of a false certificate shall be a misdemeanor, and every inspector who wilfully certifies falsely touching any steam boiler, or any appurtenance thereto belonging, or any matter or thing contained or required to be contained in any certificate, signed and sworn to by him, shall be guilty of a misdemeanor. Any person, upon application to the secretary of said board of railroad commissioners, and on the payment of such reasonable fee as said board may by rule fix, shall be furnished with a copy of any such certificate."

"§ 49-b. STATE INSPECTOR OF LOCOMOTIVE BOILERS.—Within twenty days after this section takes effect, the state railroad commission shall appoint a competent person as inspector of locomotive boilers, who shall receive a compensation to be fixed by the commission, not exceeding three thousand dollars per year. Such inspector shall, under the direction of the commission, inspect boilers or locomotives used by railroad corporations operating steam railroads within the state, and may cause the same to be tested by hydrostatic test and shall perform such other duties in connection with the inspection and test of locomotive boilers as the commission shall direct. But this section shall not relieve any railroad corporation from the duties imposed by the preceding section."

"§ 49-c. CARE OF STEAM LOCOMOTIVES : STEAM AND WATER COCKS : PENALTY.—It shall be the duty of every corporation operating a steam railroad, within this state, and of its directors, managers or superintendents, to cause the boiler of every locomotive used on such railroad to be washed out as often as once every thirty days, and to equip each boiler with, and maintain thereon at all times, a water glass, showing the height of water in the boiler, having two valves or shut-off cocks, one at each end of such glass, which valves or shut-off cocks shall be so constructed that they can be easily opened and closed by hand; also to cause such valves or shut-off cocks and all gauge cocks or try-cocks attached to the boiler to be removed and cleaned whenever the boiler is washed out pursuant to the foregoing requirements of this section; also to keep all steam valves, cocks and joints, studs, bolts and seams in such repair that they will not at any time emit steam in front of the engineer, so as to obscure his vision. No locomotive shall hereafter be driven in this state unless the same is equipped and cared for in conformity with the provisions of this section; but nothing here contained shall be construed to excuse the observance of any other requirement imposed by this chapter upon railroad corporations, their directors, officers, managers and superintendents. Every corporation, person or persons operating a steam railroad and violating any of the provisions of this section, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that such violation shall continue. The board of railroad commissioners shall enforce the provisions of this act."

1907 is entitled, "An Act to amend the railroad law, in relation to the inspection and care of steam locomotives." In and by these chapters it is provided that the subdivisions thereof shall constitute sections 49-a, 49-b and 49-c of the Railroad Law. It is thus clear that these chapters are intended to form a component part of the Railroad Law of the State.

It will be noted that the provisions of these sections relate to steam railroads and to railroad corporations operating steam railroads, and the question arises as to just what is meant by the term "railroad corporation" and "railroad," as used in the Railroad Law. The solution of this question will determine how far the powers and duties of the State Board of Railroad Commissioners in the matter of the inspection and testing of locomotive boilers extended under the Railroad Law, and therefore will determine the extent of the powers and duties of the Public Service Commission in the same matter.

In 1890 the Legislature passed several acts relating to corporations, and subsequently passed others, all of which were evidently intended to furnish a consolidation of the statutory corporation law of the State.

Chapter 563, L. 1890, was called the "General Corporation Law."

Chapter 564, L. 1890, was called the "Stock Corporation Law."

Chapter 565, L. 1890, was called the "Railroad Law."

Chapter 566, L. 1890, was called the "Transportation Corporations Law."

Chapter 567, L. 1890, was called the "Business Corporations Law," and there have been added other chapters which deal with other classes of corporations.

The Business Corporations Law provides a scheme for the organization of business corporations in general, with certain exceptions. The law provides for the filing of a certificate of incorporation and for the contents of such a certificate. It is expressly provided that a railroad corporation shall not be organized under the provisions of this law. The language is:

"Three or more persons may become a stock corporation for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad, and the transportation corporation laws, by making, signing, acknowledging and filing a certificate which shall contain:"

(Here follows an enumeration of the particulars required to be contained in the certificate).

Further, in the classification of corporations contained in section 2 of the General Corporation Law a railroad corporation is classified as something wholly distinct from a business corporation.

The Railroad Law of the State of New York contains elaborate provisions for the organization of railroad corporations, including steam railroad corporations. The organization is not effected by filing a certificate of incorporation under the Business Corporations Law, but the Legislature has deemed it important to require a distinct form of certificate of incorporation for railroad corporations, and section 2 of the Railroad Law provides at length for the contents of such a certificate. Further, section 59 of the Railroad Law provides that no railroad corporation hereafter formed under the laws of this State shall exercise the powers conferred by law upon such corporation or begin the construction of its road until the Board of Railroad Commissioners shall certify that all the requirements of the law have been complied with, and that public convenience and necessity require the construction of the railroad as proposed in the articles of association. It has been held that the corporation is not complete until this certificate has been issued.

*People ex rel Depew and Southwestern R. R. Co. v. Board of Railroad Commissioners*, 4 App. Div. 259.

It is thus plain that after the enactment of the Railroad Law no railroad corporation could be formed except pursuant to the provisions of the Railroad Law, and no railroad could be constructed by it except pursuant to the provisions of that law. The New York Dock Company was organized in 1901, but not under the Railroad Law, and hence, within the meaning of that law, this corporation could not be a railroad corporation nor could its road be regarded as a railroad.

A reference to some of the decisions of the courts leads to the same result.

It has been held that the fact that the charter of a lumber company authorized it to build a railroad as an incident of its business did not make it a railroad within a statute making railroad companies liable for injuries to employees.

*Ellington v. Beaver Dam Lumber Company*, 93 Ga. 53 (As cited in Elliott on Railroads, 2d ed., Vol. I, p. 2).

Also that a "union depot and railroad company" is not an ordinary railroad company and that it need not be incorporated under the statute providing for the incorporation of railroad companies, but might be incorporated under the general law providing for the incorporation of ordinary private corporations.

*People v. Cheeseman*, 7 Colo. 378 (As cited in Elliott on Railroads, 2d ed., Vol. I, p. 3).

In *Griggs v. Houston* (104 U. S.) the defendants who were contractors engaged in building a railroad were sued by the widow of one Griggs for damages caused by his death. He was riding on the pilot or bumper of a locomotive forming part of a construction train of the defendants at the time it collided with loaded cars

standing on the track. Griggs received injuries resulting in his death. Plaintiff's claim to recover was based upon sections of the Code of Tennessee, prescribing certain precautions which a railroad company must observe in running its trains. The trial court charged the jury that these provisions did not apply to the case, and the jury found for the defendants. On appeal the judgment was affirmed. The court says:

"We agree entirely with the court below in the opinion that the statutes in relation to railroads relied upon by the plaintiff in error are not applicable to the facts of this case. If upon the evidence the jury had brought in a verdict against the defendants it would have been the duty of the court to set it aside and grant a new trial."

Griggs v. Houston, 104 U. S. 553.

Although a company is organized under an act which provides for the formation and regulation of railroad corporations, yet, if the road is designed solely for private use, it is not such a railroad as is contemplated by the statute and the company is not entitled to exercise the right of eminent domain. So held in

Weidenfeld v. Sugar Run R. R. Co., 48 Federal Rep. 615.  
(See) Matter of Split Rock Cable Road Co., 128 N. Y. 408.

The Troy Union Railroad Company was incorporated under a special act to construct a railroad through the city of Troy for the use and benefit of the railroad companies running trains to and from said city.

Held (in effect) that this company was not liable for damages resulting from failure to fence both sides of the track as required by the General Railroad Act, but that the liability rested upon the railroad company that happened to be using the road at the time of any loss.

Tracy v. The Troy and Boston Railroad Company, 38 N. Y. 433.

The Harlem River and Portchester Railroad Company whose line extends from Harlem river to New Rochelle in the State of New York was organized in 1868 under the General Railroad Act (Laws 1850, Ch. 140) which limits the rate of transportation to three cents per mile. In 1889 the company's lessee (New York, New Haven & Hartford Railroad Company) built a spur of this road from Van Nest, a station six miles from Harlem river to a race course one-half mile distant, for the purpose of running special trains to accommodate visitors to the race course, issuing and selling a round trip ticket for fifty cents, which was fourteen cents in excess of the statutory limit of three cents per mile. The company owned the ground over which the spur was built. The spur was never used, nor intended to be used except during the races.

Held, that as such spur was not laid out nor title to the right of way acquired, as provided in section 28 of the General Railroad Act, it was not a railroad constructed under that act; but a private enterprise, which the company was at liberty to abandon at any time, and the amendment of that act (L. 1886, Ch. 415), imposing a penalty for transportation charges in excess of the statutory limit, did not apply to the spur.

Palm v. New York, New Haven & Hartford R. R. Co., 17 N. Y. Supp. 471.

It has been held that a dockage and warehouse company is not a corporation organized for a public purpose or use which justifies the delegation to it of the right of eminent domain. It has not such right even when the Legislature has attempted to confer such right upon it. Such act of the Legislature is unconstitutional and void.

Matter of Eureka Basin Warehouse and Manufacturing Co., 96 N. Y. 42.  
(See) Matter of New York, Lackawanna and Western Railway Company, 99 N. Y. 12.

In the case last cited (99 N. Y. 12) a railroad company sought to condemn dockage or wharfage property of a steamboat company. The steamboat company resisted on the ground that the property was already devoted to a public use, but the court held that the railroad company might condemn.

Judge Finch says: "The steamboat company was organized under a general law. (Laws of 1864, Ch. 232.). Under that law it was and might remain a private corporation. Its charter did not make it a common carrier or impose upon it public obligations. If it became a common carrier, or assumed public obligations, that sprang from its own voluntary action and not from the will of the sovereign. It might carry passengers or not as it pleased. It might transport freight for one firm or corporation, or a single individual, excluding all others, and confine its operations within that narrow boundary, and practically and mainly such was the scope of its business. It might use the lands here in question wholly for the purpose of building and equipping the vessels of its line and then apply them solely to private uses. The test appears to be, not what it does or may choose to do, but what under the law it must do, and whether a public trust is impressed upon it. It does not so hold its property impressed with a trust for the public use unless its charter puts that character upon it and so that it cannot be shaken off. If the law of its existence does not prevent it from being a mere private corporation, from disregarding if it pleases all public uses; if it may abandon its business

at any moment and refuse to run its propellers and sell its lands by an absolute title without responsibility to the sovereign, which is permitted by its charter (§ 2); in short, if under that charter it may be a purely private corporation, its property is not so held as to be exempt from a taking under the law of eminent domain. \* \* \* If the test should be made that of the actual use, of the character of the business done and the benefit to the public realized, we shall never know where to draw the line, and must equally exempt individuals whose property is thus used."

The Public Service Commissions Law makes no attempt to define either the term "railroad" or the term "railroad corporation." The provisions of section 2 of that law are not intended as definitions but to furnish a rule for the construction of these terms *when used in that law*.

What is said about the term "railroad" is as follows:

"The term 'railroad,' *when used in this act*, includes every railroad, other than a street railroad, by whatsoever power operated *for public use* in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad."

It is manifest that this is not a definition of the term "railroad." If it were, then street railroads would no longer be railroads. It is simply a provision that certain appurtenances of a railroad shall be understood as included in the term "when used in this act." In other words, what is evidently intended is that the meaning of the term "railroad" shall be held to be no different than heretofore (except that street railroads are, for the purposes of this act, excluded), but that whenever the term "railroad" is used in the act the appurtenances mentioned shall be deemed to be included as a part thereof. It was not intended that each one of the appurtenances mentioned should separately constitute a railroad.

What is said about the term "railroad corporation" is as follows:

"The term 'railroad corporation,' *when used in this act*, includes every corporation, company, association, joint-stock association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing or controlling any railroad or any cars or other equipment used thereon or in connection therewith."

Here again a rule of construction is laid down for the purposes of this act only. That there was no intent to make the provisions of the act apply to private corporations or to other railroads than those contemplated by the Railroad Law is shown by the first section of the act, defining the application thereof, which is as follows:

"This chapter shall be known as the public service commissions law, *and shall apply to the public services herein described*, and to the commissions hereby created."

The effect is to limit the application of the act as far as railroads are concerned to such railroads as are agencies for the public service. The term "railroad" under this law would therefore mean "public service railroad," and the term "railroad corporation" would mean, "public service railroad corporation." As has been seen, a dockage and warehouse company is not a public service corporation, but is a private corporation engaged in a private enterprise and not entitled to exercise the right of eminent domain, even when conferred by the Legislature, and having no power to resist condemnation proceedings by and on behalf of a public service corporation.

It is to be noted further that what is said in section 2 of the act about the term "railroad" and the term "railroad corporation" (as above quoted) has no application beyond the act itself, the application being restricted by the words, "when used in this act." The act contains no provisions relating to the inspection and testing of locomotive boilers, and hence, in the act, the term "railroad" and the term "railroad corporation" are not used in that connection at all.

For the reasons stated, I am of the opinion that the New York Dock Company's road is not a railroad within the meaning of the Railroad Law or of the Public Service Commissions Law, and that the powers and duties of the Commission relating to the inspection and testing of locomotive boilers do not extend to this road. The opinion heretofore written indicating a different conclusion is hereby withdrawn.

Respectfully yours,

(Signed) GEO. S. COLEMAN.  
Counsel to the Commission.

## ACCOUNTS OF THE COMMISSION.

### Accounting System.

\*[The Commission should have a simple system of accounts so that any citizen may ascertain how money is being spent.]

Commissioner Maltbie presented the following report upon accounting system of the Commission, which was approved.

#### REPORT UPON ACCOUNTING SYSTEM.

*To the Public Service Commission for the First District:*

SIRS.—Soon after the Commission took office it was found that the system of accounts used by the Rapid Transit Commission would need to be altered and extended considerably to adapt it to the needs of the Public Service Commission with its much larger field of work and its varied activities. As the committee to whom the matter was referred, I beg to submit the following report:

Upon recommendation, the Commission authorized the employment of Mr. J. R. MacNeillie of the Investors' Agency to go over the system of accounts used by the Rapid Transit Commission, to examine the organization created by the Commission, to examine the Public Service Commissions Law, and to prepare a system of accounts, forms of books, vouchers and other necessary papers and such instructions for the handling of the financial affairs of the Commission as would be in conformity with the best modern accounting practice. The importance of having as simple a system of accounts as could be devised so that any citizen might easily ascertain how the money was being spent was emphasized.

Mr. MacNeillie has prepared and submitted five reports upon different phases of the subject, which I transmit herewith. The blank forms and books necessary for the accounting work have been prepared, have been approved by me and are now in use. The accounts of the Commission have been kept upon the new plan since January 1st of this year and the detailed instructions to the auditor of the Commission and his assistants have just been approved. With these in force the same classification and methods will be followed from year to year regardless of the changes that may occur in the personnel, and the annual report will contain a statement of receipts and expenditures in such a form that any citizen may ascertain the sources of all income and the purposes for which the money appropriated by the city has been expended.

Respectfully submitted,  
(Signed) MILO R. MALTBIE,  
*Commissioner.*

April 10, 1908.

## MISCELLANEOUS ORDERS.

**Staten Island Rapid Transit Railway Company.—Freight yards near Vanderbilt avenue.**

Final Order No. 462.  
Hearing Order No. 492.  
Opinion of Commissioner McCarroll.  
Final Order No. 537.  
Final Order No. 568.

In the Matter  
of the

Hearing on the motion of the Commission on the  
question of improvement in and additions to the  
service and equipment of the STATEEN ISLAND  
RAPID TRANSIT RAILWAY COMPANY.

FINAL ORDER No. 462.  
May 5, 1908.

This matter coming on upon the report of the hearing had herein on the 22d day of November, 1907, and it appearing that the said hearing was held by and

\* See footnote, page 9.

pursuant to an order of this Commission, made November 8, 1907, and returnable on the 22d day of November, 1907, and that the said order was served upon the Staten Island Rapid Transit Railway Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified, on November 22, 1907, before Commissioner McCarroll, presiding, Abel E. Blackmar, Esq., appearing for the Commission, Joseph P. Cotton, Esq., appearing for the Staten Island Rapid Transit Railway Company, and by adjournment duly had November 26, 1907, and by adjournment duly had on December 3, 1907, and by adjournment duly had on December 10, 1907, at all of which adjourned sessions Arthur DuBois, Esq., appearing for the Commission, and Joseph P. Cotton, Esq., appearing for the railways, Mr. Commissioner Eustis presiding at the session of December 3, 1907, and Mr. Commissioner McCarroll presiding at all other adjourned sessions, and proof having been taken at all of said sessions, and it further appearing that on January 24, 1908, Order No. 217 was made by the Commission and duly served upon the Staten Island Rapid Transit Railway Company, which order was made without prejudice to further action by the Commission in respect of anything therein prescribed, or in respect of anything covered by the order for hearing on which the said Order No. 217 was made;

Now, the Commission being of the opinion after the proceedings upon said hearing that the regulations, practices, equipment, appliances and services of the Staten Island Rapid Transit Railway Company, in respect to transportation of persons and property in the First District, have been and are in certain particulars unsafe, unreasonable, improper and inadequate, and in the judgment of the Commission certain changes, improvements and additions thereto being such as ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public or of its employees, or in order to secure adequate service and facilities for the transportation of passengers and property, and it being the judgment of the Commission that the changes, additions and improvements in regulations, equipment, appliances and service of the said company as below set forth are such as are just, reasonable, safe, adequate and proper and ought reasonably to be made to promote the security and convenience of the public and employees, and the Commission being informed by the Staten Island Rapid Transit Railway Company that the said Staten Island Rapid Transit Railway Company had carefully considered the situation and would on an order from the Commission transfer their freight business from the side-track at Bay street to the Vanderbilt avenue yard.

*Therefore it is ordered:*

1. That the Staten Island Rapid Transit Railway Company remove its freight business now being conducted at the freight yard just east of Bay street and opposite Townsend avenue, Clifton, to the yard located east of Bay street and about one hundred and fifty feet north of Vanderbilt avenue and extending therefrom north about five hundred and seventy-five feet.

2. That the movement of the locomotives from the locomotive storage yard opposite Simonson avenue, Clifton, into and out of service, be discontinued across Bay street as far as it may be practicable to do so by introducing said locomotives into service from the northern end of the yard.

*And it is further ordered,* That this order shall take effect on May 15th, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything herein prescribed prior to the expiration of said period of two years.

*And it is further ordered,* That before May 13, 1908, the said Staten Island Rapid Transit Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

Orders 492, 537 and 566 while appearing to constitute a separate proceeding were in effect a continuation of the above matter.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvement in and additions to the regulations, equipment and appliances of the STATEEN ISLAND RAPID TRANSIT RAILWAY COMPANY.

HEARING ORDER No. 492.  
May 15, 1908.

Freight Yards near Vanderbilt Avenue.

*It is hereby ordered* that a hearing be had on the 25th day of May, 1908, at 10:30 o'clock in the forenoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, in the borough of Manhattan, city and State of New York, to inquire whether the regulations, equipment and appliances of the Staten Island Rapid Transit Railway Company, in respect to the transportation of passengers and property in the First District, are unsafe, unreasonable, improper or inadequate and whether changes, improvements

## ORDERS OF THE COMMISSION ISSUED IN 1908. 737

and additions thereto ought reasonably to be made in the manner below set forth in order to promote the security or convenience of the public or employees or in order to secure adequate service and facilities for the transportation of passengers and property and if such be found to be the fact, then to determine whether a change, addition or improvement of regulations, equipment, appliances and service, as hereinafter set forth is such as would be just, reasonable, safe, adequate and proper and ought reasonably to be made in order to promote the security and convenience of the public or employees and in order to secure adequate service or facilities for the transportation of passengers and property in the First District, that is to say:

1. That the Staten Island Rapid Transit Railway Company remove its freight business now being conducted at the freight yard just east of Bay street and opposite Townsend avenue, Clifton, to the yard located east of Bay street and about one hundred and fifty feet north of Vanderbilt avenue and extending therefrom north about five hundred and seventy-five feet.

2. That the movement of the locomotives from the locomotive storage yard opposite Simonson avenue, Clifton, into and out of service be discontinued across Bay street as far as it may be practicable to do so, by introducing said locomotives into service from the northern end of the yard.

3. That such other changes be made in the arrangement of freight yards and in the switching of locomotives, as may be necessary to prevent or reduce to a minimum the use of the railroad tracks across Bay street for the switching of locomotives and freight cars in or near the Clifton freight yard.

And if any such changes, improvements and additions be found to be such as ought to be made as aforesaid, then to determine what period would be a reasonable time within which the same should be directed to be executed.

All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

*Further ordered,* That the Staten Island Rapid Transit Railway Company be given at least three (3) days' notice of such hearing by service upon it either personally or by mail of a certified copy of this order and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearings were held May 25th and 26th.

### OPINION OF COMMISSION.

(Adopted May 29, 1908.)

#### COMMISSIONER McCARROLL:—

Your committee to whom was referred several matters on the subject of complaints of organizations and citizens in Staten Island, would report:

Perhaps the most serious matter which has been considered by the committee is the one of the operation of the steam railroads of the Staten Island Railway Company across the highway known as Bay street. The interruptions to travel have been very serious, being oftentimes quite prolonged and resulting in inconvenience and loss to the public. It has also been a point of great danger notwithstanding the precautions which have been taken by the railway company to protect the people. The borough officials and the citizens have from time to time during nearly twenty years of this operation been endeavoring to secure a remedy, but seem to have been unable to reach it.

By direction of your committee a thorough investigation was undertaken both by the Bureau of Inspection and the Electrical Engineer's Department; both Mr. McLimont and Mr. Turner have given their personal attention and examination, and they have had frequent observations and inspections made by their staff. In conference with Mr. Tribus, the Commissioner of Public Works in the Borough of Richmond, and others, a plan for the removal of the difficulty was found. Conferences by your committee were held with the railway company, represented by its president, Mr. George Campbell. Following them, the hearings were given on order of the Commission, and your committee now recommends the issuance of a final order which accompanies this report.

This order involves the removal by the company of its switching operations to a new part of their premises, which will, to a very large extent, if not entirely, remove the danger and inconvenience of the previous mode of operation. It will restore the use of the highway to the people of the borough without any serious interruption, and, of course, at the same time remove the danger that was necessarily involved in these operations.

Serious complaint has also been made as to the inadequate service rendered by the Staten Island Railway Company and the Staten Island Rapid Transit Railway Company. The companies, on representation of your committee, have indicated their readiness to remedy this, but upon the issuance of the summer time table, under

date of May 20th, it was found that there was not the increase of service anticipated, and that other changes were made which had resulted in inconvenience to the traveling public. Your committee presented these complaints to the companies with the urgency that they should be met and remedied. After a conference the railway companies have agreed to restore some trains that were taken off which were important for the convenience of travelers and by stopping some other trains at points on the schedule which the trains previously had passed. It is believed that all due accommodations will be given and that the public will be well served. No further action is therefore required in any of these matters.

The question of fare has been already acted upon by the Commission. An order was adopted by the Commission at yesterday's meeting providing for a public hearing on July 8th.

Thereupon the following final order was issued:

**FINAL ORDER No. 537.**

May 29, 1908.

This matter coming on upon the report of the hearing had herein on the 25th day of May, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made May 15, 1908, and returnable on May 25, 1908, and that the said order was duly served upon the Staten Island Rapid Transit Railway Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on May 25, 1908, before Mr. Commissioner McCarroll, presiding, Arthur DuBois, Esq., assistant counsel, appearing for the Commission, Edward B. Bruce, Esq., appearing for the Staten Island Rapid Transit Railway Company, and proof having been taken, and by adjournment duly had on May 26, 1908, George H. Campbell, Esq., appearing for the Staten Island Rapid Transit Railway Company, and Arthur DuBois for the Commission,

Now, it being made to appear after the proceedings upon said hearing that the regulations, equipment, appliances and service of the Staten Island Rapid Transit Railway Company in respect to the transportation of persons and property in the First District have been and are in certain respects unsafe, unreasonable, improper and inadequate, and that changes and improvements thereto ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public, and it appearing that the changes and improvements as below set forth are such as are just, reasonable, safe, adequate and proper, and ought reasonably to be made to promote the security and convenience of the public.

Therefore, on motion of George S. Coleman, Esq., counsel to the Commission,

*It is ordered*, 1. That the Staten Island Rapid Transit Railway Company remove its freight business now being conducted at the freight yard just east of Bay street and opposite Townsend avenue, Clifton, to the yard located east of Bay street and about one hundred and fifty feet north of Vanderbilt avenue and extending therefrom north about five hundred and seventy-five feet.

2. That the movement of the locomotives from the locomotive storage yard opposite Simonson avenue, Clifton, into and out of service be discontinued across Bay street as far as it may be practicable to do so, by introducing said locomotives into service from the northern end of the yard.

*And it is further ordered*, That this order shall take effect on June 15, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything covered by the order for hearing prior to the expiration of said period of two years, and it is

*Further ordered*, That Order No. 462, made and filed in the office of the Commission on May 5, 1908, be and the same hereby is in all respects abrogated.

*Further ordered*, That before June 30, 1908, the Staten Island Rapid Transit Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

**ORDER No. 566, MODIFYING ORDER No. 537.**

June 9, 1908.

The Staten Island Rapid Transit Railway Company, having applied in writing on June 2, 1908, for a change and modification in Order No. 537 heretofore made on May 29, 1908, and the Commission being of opinion that Order No. 537 for the improvement in and addition to the service and equipment of the Staten Island Rapid Transit Railway Company in respect to the freight yards near Vanderbilt avenue, Clifton, Staten Island, should be changed and modified in certain particulars,

*Ordered*, That Order No. 537 made May 29, 1908, be and the same hereby is changed and modified to read as follows:

## FINAL ORDER No. 537.

This matter coming on upon the report of the hearing had herein on the 25th day of May, 1908, and it appearing that the said hearing was held by and pursuant to an order of this Commission made May 15, 1908, and returnable on May 25, 1908, and that the said order was duly served upon the Staten Island Rapid Transit Railway Company, and that the said service was by it duly acknowledged, and that the said hearing was held by and before the Commission on the matters in said order specified on May 25, 1908, before Mr. Commissioner McCarroll presiding, Arthur DuBois, Esq., assistant counsel, appearing for the Commission, Edward B. Bruce, Esq., appearing for the Staten Island Rapid Transit Railway Company, and proof having been taken, and by adjournment duly had on May 26, 1908, George H. Campbell, Esq., appearing for the Staten Island Rapid Transit Railway Company, and Arthur DuBois for the Commission.

Now it being made to appear after the proceedings upon said hearing that the regulations, equipment, appliances and service of the Staten Island Rapid Transit Railway Company in respect to the transportation of persons and property in the First District have been and are in certain respects unreasonable, improper and inadequate, and that changes and improvements thereto ought reasonably to be made in the manner below set forth, in order to promote the security or convenience of the public, and it appearing that the changes and improvements as below set forth are just, reasonable, safe, adequate and proper, and ought reasonably to be made to promote the security and convenience of the public.

Therefore, on motion of George S. Coleman, Esq., Counsel to the Commission,

*It is ordered*, 1. That the Staten Island Rapid Transit Railway Company remove its freight business now being conducted at the freight yard just east of Bay street and opposite Townsend avenue, Clifton, to the yard located east of Bay street and about one hundred and fifty feet north of Vanderbilt avenue and extending therefrom north about five hundred and seventy-five feet.

2. That the movement of the locomotives from the locomotive storage yard opposite Simonson avenue, Clifton, into and out of service be discontinued across Bay street as far as it may be practicable to do so, by introducing said locomotives into service from the northern end of the yard. And it is

*Further ordered*, That said order shall take effect on June 30, 1908, and shall continue in force for a period of two years from and after the taking effect of the same, but without prejudice to an order for further or additional hearings and action thereon by the Commission in respect of anything covered by the order for hearing herein prior to the expiration of said period of two years, and it is

*Further ordered*, That Order 462, made and filed in the office of the Commission on May 5, 1908, be and the same hereby is in all respects abrogated.

*Further ordered*, That before June 15, 1908, the Staten Island Rapid Transit Railway Company notify the Public Service Commission for the First District whether the terms of this order are accepted and will be obeyed.

### Brooklyn Heights Railroad Company.— Hours of labor of train dispatchers and tower switchmen on the Bridge Division.

In the Matter  
of the

Hearing on the motion of the Commission on the question of improvements in the service of the BROOKLYN HEIGHTS RAILROAD COMPANY in respect to employment of train dispatchers and tower switchmen on the Bridge Division.

HEARING ORDER No. 503.  
May 19, 1908.

*It is hereby ordered*, That a hearing be had on the 29th day of May, 1908, at 2:30 o'clock in the afternoon, or at any time or times to which the same may be adjourned, at the rooms of the Commission, No. 154 Nassau street, in the borough of Manhattan, city of New York, State of New York, to inquire whether the regulations, equipment and service of the Brooklyn Heights Railroad Company in respect to the transportation of persons in the First District are unjust, unreasonable, unsafe, improper or inadequate, and if such be found to be the fact then to determine whether it is and will be just, reasonable, safe, adequate and proper regulation and practice to direct that the hours of labor for the following employees be limited to not more than eight hours in each day of twenty-four hours:

1. Two Brooklyn train dispatchers.
  2. Two Park row train dispatchers.
  3. Three tower switchmen at Tillary street.
  4. Three tower switchmen in the dividing switch tower situate about one hundred and fifty feet west of the Brooklyn terminal.
  5. Three tower switchmen in the Park row terminal.
- And if any such changes, improvements or additions be found to be such as ought to be made as aforesaid, then to determine what period will be a reasonable time in which the same should be directed to be executed.
- All to the end that the Commission may make such order or orders in the premises as shall be just and reasonable.

740 PUBLIC SERVICE COMMISSION — FIRST DISTRICT.

*And it is further ordered,* That the said Brooklyn Heights Railroad Company be given at least seven days' notice of such hearing by service upon it, either personally or by mail, of a certified copy of this order, and that at such hearing said company be afforded all reasonable opportunity for presenting evidence and examining and cross-examining witnesses as to the matters aforesaid.

Hearing held May 29th.

**Pennsylvania Tunnel and Terminal Railroad Company and Long Island Railroad Company.— Gas line through Sunnyside yard.**

Complaint Order No. 778.  
Extension Order No. 803.  
Hearing Order No. 826.

COMPLAINT OF THE EAST RIVER GAS COMPANY OF LONG ISLAND CITY

against

PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY, AND THE LONG ISLAND RAILROAD COMPANY.

Complaint Order No. 778 (see form, note 1), issued October 13th.

Extension Order No. 803 (see form, note 2), issued October 27th.

Hearing Order No. 826 (see form, note 3), issued November 10th.

Hearings were held November 18th and December 18th.

Adjourned to January 12, 1909.

**Gas Corporations.— General investigation into the condition of.**

In the Matter  
of a  
General investigation into the condition of Gas  
Corporations within the First District.

ORDER No. 651.  
July 10, 1909.

Whereas, This Commission is vested by law with the general supervision of all persons and corporations having authority within the First District under any general or special law or under any charter or franchise to lay down, erect or maintain pipes, conduits, ducts or other fixtures in, over or under streets, highways and public places of any municipality, for the purpose of furnishing or distributing gas, and not only has the power but is charged with the duty to examine the methods employed by such persons, corporations and municipalities in manufacturing and supplying gas for light or heat and in transmitting the same, and to order such improvements as will best promote the public interest, preserve the public health and protect those using gas or those employed in the manufacture or distribution thereof or in the maintenance or operation of the works, poles, lines, conduits, ducts, and systems maintained in connection therewith and to examine all persons, corporations and municipalities under its supervision and keep informed as to the methods employed by them in the transaction of their business and see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

Now, therefore, be it

*Resolved,* That this Commission shall forthwith, as required by section 68 of the Public Service Commissions Law, examine, inquire into, and investigate, the general conditions of each and every gas corporation within the First District, its capitalization, its franchises, and the manner in which its lines owned, leased, controlled or operated, are managed, conducted and operated, including the methods employed by it in manufacturing and supplying gas and in transmitting the same and the methods employed by it in the transaction of its business and as to whether its property is maintained and operated for the security and accommodation of the public and in compliance with all the provisions of law and of its franchises and charters.

*Further resolved,* That the Chairman may designate from time to time a Commissioner to preside, with power to call and adjourn hearings hereunder.

# INDEX.

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## Orders and Opinions of 1908.

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COMPANY.	SUBJECT.	PAGE.
<b>Accounts of the Commission:</b>		
Report upon the accounting system.....		735
<b>American Express Company:</b>		
Excessive and unreasonable charges upon transportation of crated furniture between points in New York City:		
Complaint Order No. 652.....		239
Hearing Order No. 681.....		239
Opinion of Commissioner Eustis.....		240
Dismissal Order No. 744.....		240
<b>American Railway Traffic Company:</b>		
Noise caused by cars at curve at Ocean avenue and Avenue F:		
Complaint Order No. 295.....		576
Hearing Order No. 382.....		576
Final Order No. 442.....		576
<b>Amsterdam Electric Light, Heat and Power Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812a, 812b.....		277
<b>Assembly bills relating to operation and equipment of railroads and street railroads considered:</b>		
Letter of Chairman Willcox.....		618
<b>Astoria Light, Heat and Power Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....		277
<b>Atlantic Avenue Elevated Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748.....		270
<b>Baltimore and Ohio Railroad Company:</b>		
Application for permission to put into effect a short notice tariff schedule:		
Order No. 319.....		212
<b>Bleecker Street and Fulton Ferry Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748a.....		270
<b>Broadway and Seventh Avenue Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748b.....		270

COMPANY.	SUBJECT.	PAGE.
<b>Bronx Gas and Electric Company:</b>		
Extending time to file annual report:		
Extension Order No. 812.....		277
<b>Bronx Traction Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 748b, 748g.....		271
<b>Brooklyn City and Newtown Railroad Company:</b>		
Amending annual report:		
Hearing Order No. 598.....		265
Opinion of Commissioner Bassett.....		265
Final Order No. 726.....		266
Rehearing Order No. 759.....		267
Final Order No. 792.....		267
Extending time to file annual report:		
Extension Orders Nos. 748, 748c.....		270
<b>Brooklyn City Railroad Company:</b>		
Service on Third avenue surface line:		
Complaint Order No. 277.....		397
Neglect to pave and keep in repair the street between and adjoining the rails:		
Hearing Order No. 190.....		667
Letter of Chairman Willcox.....		668
Opinion of Commissioner Bassett.....		668
Final Order No. 318.....		671
Extension Orders Nos. 339, 357.....		672
Final Order No. 389.....		672
Extension Order No. 440.....		674
<b>Brooklyn Heights Railroad Company:</b>		
Application for permission to put into effect a short notice tariff schedule:		
Order No. 819.....		212
Insufficient trolley car service furnished to lower Fulton and Wash- ington streets' sections:		
Complaint Order No. 765.....		411
Discontinuance of the Thirty-ninth Street Ferry-Bay Ridge avenue line:		
Hearing Order No. 755.....		509
Opinion of Commissioner Bassett.....		510
Dismissal Order No. 849.....		510
Inadequate service on the crosstown line at Manhattan Avenue Bridge over Newtown creek:		
Complaint Order No. 691.....		511
Hearing Order No. 724.....		511
Opinion of counsel.....		512
Opinion of Commissioner Bassett.....		513
Final Order No. 845.....		514
Case No. 845, Extension Order .....		514
Case No. 845, Rehearing Order .....		515

COMPANY.	SUBJECT.	PAGE.
<b>Brooklyn Heights Railroad Company.</b>	—Continued:	
Inadequate service on the crosstown line, etc.—Continued:		
Opinion of Commissioner Bassett.....		515
Case No. 845, Final Order.....		516
Noise caused by cars at curve at Ocean avenue and Avenue F:		
Complaint Order No. 295.....		576
Hearing Order No. 382.....		576
Final Order No. 442.....		576
Noise caused by operation of cars on the Bergen street and Nostrand avenue line:		
Case No. 1004, Complaint Order.....		577
Operation of cars on certain lines:		
Case No. 1018, Filing Order.....		318
Vestibuling cars:		
Hearing Order No. 342 .....		585
Final Order No. 381.....		585
Defective tracks and switches on Main street near Fulton and Prospect streets:		
Complaint Order No. 220.....		619
Removal of tracks in Fifty-second street from Second avenue to the public dock in the borough of Brooklyn:		
Opinion of Counsel.....		216
Complaint Order No. 674.....		216
Hearing Order No. 695.....		216
Opinion of Commissioner Bassett.....		217
Discontinuance Order No. 817.....		217
Hearing Order No. 818.....		218
Opinion of Commissioner Bassett.....		218
Re-establishment of station at Kings Highway:		
Complaint Order No. 518.....		664
Discontinuance Order No. 382.....		664
Failure to operate cars on Nassau avenue line from midnight to 5 a. m.:		
Complaint Order No. 297.....		397
Increase of service on Flatbush-Seventh avenue line:		
Hearing Order No. 372.....		397
Inadequate service on Sixteenth avenue line, Brooklyn:		
Complaint Order No. 425.....		399
Service on Flatbush avenue line:		
Hearing Order No. 347.....		399
Final Order No. 434.....		401
Rehearing Order No. 458.....		402
Final Order No. 504.....		402
Rehearing Order No. 564.....		404
Final Order No. 610.....		404
Rehearing Order No. 682.....		406
Final Order No. 684.....		407
Cross-over switches on the Nostrand avenue line at Church avenue; turning cars back at Church avenue:		
Hearing Order No. 328.....		505

COMPANY.	SUBJECT.	PAGE.
<b>Brooklyn Heights Railroad Company.</b>	—Continued:	
Cross-over switches on the Nostrand avenue line, etc.—Continued:		
Opinion of Commissioner Bassett.....		506
Final Order No. 376.....		506
Insufficient service over Williamsburg Bridge between 11 p. m. and 3 a. m.:		
Complaint Order No. 446.....		411
Discontinuance Order No. 530.....		412
Operation of trains and surface cars at Sixty-fifth street and Third avenue terminal, Brooklyn:		
Complaint Order No. 375.....		527
Extension Orders Nos. 396, 431, 441.....		527
Hearing Order No. 532.....		527
Opinion of Commissioner Bassett.....		527
Final Order No. 597.....		529
Service on the Williamsburg Bridge — Bridge local cars:		
Hearing Order No. 635.....		409
Final Order No. 706.....		409
Extension Order No. 715.....		410
Rehearing Order No. 719.....		410
Final Order No. 723.....		411
Traffic conditions at Graham and Flushing avenues, and Broadway, Brooklyn:		
Complaint Order No. 417.....		561
Failure to stop cars at the north end of the bridge over Coney Island creek:		
Complaint Order No. 633.....		507
Hearing Order No. 658.....		507
Final Order No. 729.....		507
Discontinuance of the Thirty-ninth Street Ferry-Bay Ridge avenue line:		
Hearing Order No. 725.....		508
Final Order No. 758.....		509
Defective condition of tracks on Tompkins avenue between Broadway and Division avenue:		
Case No. 1026, Complaint Order.....		621
Excessive fare to Flushing:		
Complaint Order No. 207.....		241
Extension Orders Nos. 223, 244.....		241
Hearing Order No. 285.....		241
Opinion of Commissioner Bassett.....		241
Case No. 285, Dismissal Order.....		246
Excessive fare from North Beach to points south of Flushing Road junction, Broadway and Union avenue:		
Complaint Order No. 215.....		246
Extension Order No. 245.....		246
Hearing Order No. 286.....		246
Ten-cent fare to Coney Island:		
Complaint Order No. 276.....		247

COMPANY.	SUBJECT.	PAGE.
<b>Brooklyn Heights Railroad Company.</b> —Continued:		
Ten-cent fare to Coney Island.—Continued:		
Extension Order No. 304.....	247	
Hearing Order No. 353.....	247	
Ten-cent fare to Coney Island:		
Complaint Order No. 276a.....	247	
Extension Order No. 303.....	247	
Hearing Order No. 351.....	247	
Neglect to pave and keep in repair the streets between and adjoining the rails:		
Hearing Order No. 190.....	667	
Letter of Chairman Willcox.....	668	
Opinion of Commissioner Bassett.....	668	
Final Order No. 318.....	671	
Extension Orders Nos. 339, 357.....	672	
Final Order No. 389.....	672	
Extension Order No. 440.....	674*	
Hours of labor for train despatchers and tower switchmen on the Bridge division:		
Hearing Order No. 503.....	739	
<b>Brooklyn, Queens County and Suburban Railroad Company:</b>		
Service on Broadway line between Alabama avenue and Cypress Hills:		
Complaint Order No. 493.....	412	
Extension Order No. 533.....	412	
Service on Ralph avenue surface line:		
Hearing Order No. 678.....	412	
Service on Jamaica avenue line:		
Final Order No. 196.....	414	
Order No. 663.....	414	
Rehearing Order No. 717.....	415	
Order No. 733.....	415	
Rehearing Order No. 605.....	416	
Opinion of Commissioner Bassett.....	416	
Order No. 735.....	416	
Service on Metropolitan avenue line:		
Hearing Order No. 464.....	517	
Opinion of Commissioner Bassett.....	518	
Final Order No. 605.....	519	
Rehearing Order No. 628.....	519	
Final Order No. 683.....	520	
Traffic conditions at Graham and Flushing avenues and Broadway, Brooklyn:		
Complaint Order No. 417.....	561	
Conditions at Cypress Hills transfer point, Crescent street and Jamaica avenue:		
Complaint Order No. 515.....	521	
Hearing Order No. 587.....	521	
Opinion of Commissioner Bassett.....	521	
Final Order No. 855.....	522	

COMPANY.	SUBJECT.	PAGE.
<b>Brooklyn, Queens County and Suburban Railroad Company.</b> —Continued:		
Excessive fare from North Beach to points south of Flushing Road junction, Broadway and Union avenue:		
	Complaint Order No. 215.....	246
	Extension Order No. 245.....	246
	Hearing Order No. 286.....	246
Ten-cent fare to Coney Island:		
	Complaint Order No. 276a.....	247
	Extension Order No. 303.....	247
	Hearing Order No. 351.....	247
Ten-cent fare to Coney Island:		
	Complaint Order No. 276.....	247
	Extension Order No. 304.....	247
	Hearing Order No. 353.....	247
Repairs to pavement on Marcy avenue:		
	Hearing Order No. 191.....	674
	Letter of Chairman Wilcox.....	668
	Opinion of Commissioner Bassett.....	668
	Dismissal Order No. 317.....	674
<b>Brooklyn Rapid Transit Company:</b>		
Discontinuance of the Park Row service on the St. Johns Place, Third avenue and Vanderbilt avenue lines:		
	Order No. 475.....	318
Side doors on elevated railroad cars—Ten-car trains on elevated lines operated over Brooklyn Bridge:		
	Order for Answer No. 262.....	586
<b>Brooklyn Union Elevated Railroad Company:</b>		
Application for authority to issue a mortgage of \$20,000,000:		
	Opinion of Commissioner McCarron.....	112
	Final Order No. 643.....	113
Application for permission to erect an elevated railroad on the Flatbush avenue extension and for the exclusive use of two tracks on Manhattan Bridge:		
	Hearing Order No. 657.....	172
	Opinion of Commissioner McCarron.....	173
	Resolution denying application.....	176
Application for approval of contract with the Canarsie Railroad Company:		
	Case No. 1009, Hearing Order.....	186
	Opinion of Commissioner Bassett.....	186
	Case No. 1009, Final Order.....	187
Application of the city of New York to open Hegeman avenue across the tracks of:		
	Hearing Order No. 230d-1.....	207
	Opinion of Commissioner Bassett.....	208
	Final Order No. 490.....	209
Opening Avenue P across the tracks of, between Ocean avenue and Gravesend avenue, Brooklyn:		
	Hearing Order No. 555.....	204

COMPANY.	SUBJECT.	PAGE.
<b>Brooklyn Union Elevated Railroad Company.—Continued:</b>		
Operation of elevated trains over Brooklyn Bridge and at its terminal:		
Hearing Order No. 298.....		522
Running of open cars in inclement weather:		
Complaint Order No. 479.....		523
Operation of trains and surface cars at Sixty-fifth street and Third avenue terminal, Brooklyn:		
Complaint Order No. 375.....		527
Extension Orders Nos. 396, 431, 441.....		527
Hearing Order No. 532.....		527
Opinion of Commissioner Bassett.....		527
Final Order No. 597.....		529
Service between Park Row and Sands street, and Fulton Ferry and Brighton Beach:		
Hearing Order No. 202.....		417
Final Order No. 296.....		418
Final Order No. 664.....		419
Local service and express stops on the Brighton Beach line:		
Hearing Order No. 614.....		524
Opinion of Commissioner McCarroll.....		525
Dismissal Order No. 671.....		526
Service on the Lexington avenue line:		
Final Order No. 196.....		414
Order denying application for rehearing No. 663.....		414
Rehearing Order No. 717.....		415
Order denying application for modification, No. 733.....		415
Rehearing Order No. 665.....		416
Opinion of Commissioner Bassett.....		416
Order No. 735.....		416
Through service to Coney Island on the Brighton Beach division:		
Complaint Order No. 760.....		529
Service on Fifth avenue and Fulton street lines:		
Hearing Order No. 771.....		425
Service on Broadway. Elevated line:		
Hearing Order No. 333.....		419
Opinion of Commissioner Bassett.....		421
Final Order No. 471.....		422
Rehearing Order No. 525.....		423
Final Order No. 462.....		423
Rehearing Order No. 716.....		424
Final Order No. 738.....		425
Service on the Broadway elevated line:		
Case No. 1014, Hearing Order.....		426
Service on the Myrtle avenue elevated line:		
Case No. 1019, Hearing Order.....		427
Service on Lexington avenue elevated line:		
Case No. 1020, Hearing Order.....		428
Air-brake equipment:		
Letter of electrical engineer.....		586

COMPANY.	SUBJECT.	PAGE.
<b>Brooklyn Union Elevated Railroad Company.—Continued:</b>		
Air-brake equipment.—Continued:		
	Final Order No. 746.....	586
Wrecking train at Brooklyn terminal of Brooklyn Bridge:		
	Hearing Order No. 213.....	719
	Opinion of Commissioner Bassett.....	720
	Final Order No. 257.....	720
	Extension Order No. 280.....	721
	Resolution .....	721
	Opinion of Commissioner Bassett.....	721
	Resolution .....	723
Gates at Fresh Pond road on the Lutheran Cemetery line:		
	Extension Order No. 263.....	367
Discontinuance of elevated stations on the Fulton street line at Court and Fulton streets and at Boerum Place and Fulton street:		
	Hearing Order No. 201.....	190
	Final Order No. 224.....	191
Additional stairway at Marcy avenue station on Broadway route:		
	Complaint Order No. 358.....	631
Passageway and transfer from Fulton street elevated to Fifth avenue elevated at Flatbush avenue:		
	Complaint Order No. 413.....	631
Unprotected condition of Van Sicklen avenue station of the City line:		
	Complaint Order No. 541.....	632
Shelter at Avenue L station on the Canarsie elevated lines:		
	Hearing Order No. 718.....	632
	Opinion of Commissioner Bassett.....	633
	Final Order No. 782.....	633
Additional station signs and stairways:		
	Extension Orders Nos. 236, 307, 345, 398.....	634
	Extension Orders Nos. 470, 528, 582, 645.....	635
	Rehearing Orders Nos. 660, 754.....	636
	Opinion of Commissioner Bassett.....	637
	Extension Orders Nos. 761, 829.....	637
Lack of shelter at Thirty-ninth street and Church avenue:		
	Complaint Order No. 837.....	638
Reopening of station at Lafayette avenue and Fort Green Place:		
	Complaint Order No. 846.....	638
	Case No. 846, Hearing Order.....	638
Opening of stairway leading to easterly end of island platform at Manhattan terminal of Brooklyn Bridge:		
	Hearing Order No. 558.....	523
	Opinion of Commissioner Bassett.....	524
Terminal at Cypress Hills station:		
	Final Order No. 256.....	639
	Extension Order No. 260.....	640
	Extension Orders Nos. 457, 620, 854.....	641
Ten-cent fare to Coney Island:		
	Complaint Order No. 276.....	247

COMPANY.	SUBJECT.	PAGE.
<b>Brooklyn Union Elevated Railroad Company.</b> —Continued:		
Ten-cent fare to Coney Island.—Continued:		
Extension Order No. 304.....		247
Hearing Order No. 353.....		247
Ten-cent fare to Coney Island:		
Complaint Order No. 276a.....		247
Extension Order No. 303.....		247
Hearing Order No. 351.....		247
Number of passengers, running time and headway of trains on certain lines:—		
Order No. 187.....		319
Number of trains operated over Brooklyn Bridge during rush hours:		
Order No. 198.....		319
Despatchers and “trouble” reports:		
Order No. 228.....		297
<b>Brooklyn Union Gas Company:</b>		
Application for authority to issue \$3,000,000 of capital stock for the purpose of converting debentures into capital stock:		
Opinion of counsel.....		114
Hearing Order No. 627.....		115
Opinion of Commissioner Eustis.....		116
Final Order No. 640.....		116
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....		277
<b>Brush Electric Illuminating Company of New York:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....		277
<b>Canarsie Railroad Company:</b>		
Application for approval of contract with Brooklyn Union Elevated Railroad Company:		
Case No. 1009, Hearing Order.....		186
Opinion of Commissioner Bassett.....		186
Case No. 1009, Final Order.....		187
<b>Central Crosstown Railroad Company:</b>		
Application for approval of agreement for operation of road under modification of lease to the Metropolitan Street Railway Company and New York City Railway Company:		
Hearing Order No. 622.....		183
Hearing Order No. 622a.....		184
Opinion of Commissioner Eustis.....		184
Final Order No. 637.....		185
Extending time to file annual report:		
Extension Order No. 748a.....		270
<b>Central Park, North and East River Railroad Company:</b>		
Establishment of through routes and joint rates with the Metropolitan Street Railway Company:		
Hearing Order No. 670.....		249
Final Order No. 673.....		250

COMPANY.	SUBJECT.	PAGE.
<b>Central Park, North and East River Railroad Company.—Continued:</b>		
Establishment of through routes and joint rates, etc.—Continued:		
Order No. 693.....		251
Hearing Order No. 752.....		251
Final Order No. 815.....		252
Rehearing Order No. 821.....		253
Rehearing Order No. 825.....		254
Final Order No. 830.....		254
Through routes and joint rates with the Third Avenue Railroad Company, Forty-second Street, Manhattanville & St. Nicholas Avenue Railroad Company:		
Hearing Order No. 786.....		260
Extension Order No. 793.....		260
Hearing Order No. 796.....		261
Guard rails on horse cars used on the "Belt Line":		
Hearing Orders Nos. 668, 694.....		368
Final Order No. 709.....		369
Service on Fifty-ninth Street Crosstown line:		
Hearing Order No. 649.....		429
Receipts and expenses for a thirty-day period:		
Order No. 669.....		314
Receipts and expenses of lines and number of car-miles operated:		
Order No. 804.....		314
<b>Central Union Gas Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....		277
<b>City Island Railroad Company:</b>		
Application for approval of change of motive power:		
Hearing Order No. 807.....		168
Opinion of counsel.....		169
Statements by Commissioners Bassett and Maltbie.....		170
Final Order No. 843.....		170
Improvements in and additions to the service and equipment:		
Hearing Order No. 428.....		613
Final Order No. 568.....		614
Extension Order No. 619.....		614
Extension Order No. 703.....		615
Extending time to file annual report:		
Extension Order No. 748a.....		270
<b>City of New York:</b>		
Application to acquire title to various streets in the boroughs of Queens and Brooklyn:		
Hearing Orders Nos. 230, 230a.....		205
Hearing Orders Nos. 230b, 230c.....		206
Hearing Order No. 230d.....		207
Application to open Hegeman avenue across the tracks of the Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company:		
Hearing Order No. 230d-1.....		207

COMPANY.	SUBJECT.	PAGE.
<b>City of New York.</b> —Continued:		
Application to open Hegeman avenue across the tracks, etc.—Con.		
Opinion of Commissioner Bassett.....		208
Final Order No. 490.....		209
Application to open West Two Hundred and Thirty-fourth street across the tracks of the Putnam division of the N. Y. C. & H. R. R. R. Co.:		
Hearing Order No. 278.....		210
Application to open Chester street across tracks of Long Island Railroad Company between Riverdale avenue and East Ninety- eighth street, Brooklyn:		
Hearing Order No. 430.....		200
Application to open Avenue P across tracks of Long Island Railroad Company and Brooklyn Union Elevated Railroad Company between Ocean avenue and Gravesend avenue, Brooklyn:		
Hearing Order No. 555.....		204
<b>Common Carriers:</b>		
Investigation into the general condition of:		
Opinion of Counsel.....		691
Order No. 615.....		691
Stockholding in:		
Order No. 136a.....		296
<b>Commutation Rates</b> (see Rates, Fares and Charges, page 230).		
<b>Coney Island and Brooklyn Railroad Company:</b>		
Application for authority to issue \$30,000 of bonds:		
Hearing Order No. 233.....		117
Opinion of Commissioner Bassett.....		117
Final Order No. 273.....		118
Application for authority to issue additional bonds:		
Hearing Order No. 420.....		119
Insufficient service on DeKalb avenue line at Borough Hall:		
Complaint Order No. 281.....		430
Service on Covert avenue and Stanhope street lines:		
Complaint Order No. 340.....		433
Hearing Order No. 476.....		433
Dismissal Order No. 542.....		433
Service on DeKalb avenue line:		
Hearing Orders Nos. 384, 384a.....		430
Opinion of Commissioner Bassett.....		432
Inadequate service on DeKalb avenue line:		
Complaint Order No. 672.....		434
Operation of DeKalb avenue line:		
Case No. 1017.....		319
Automatic circuit breakers; new car bodies:		
Hearing Order No. 203.....		589
Opinion of Commissioner Bassett.....		590
Final Order No. 255.....		590
Extension Order No. 268. ....		590

COMPANY.	SUBJECT.	PAGE.
<b>Coney Island and Brooklyn Railroad Company.</b> —Continued:		
Defective equipment and poor service on Smith street line:		
	Rehearing Order No. 197.....	587
	Opinion of Commissioner Bassett.....	587
	Final Order No. 239.....	588
Overhauling and repair of cars:		
	Opinion of Commissioner Bassett.....	723
	Opinion of Commissioner Bassett.....	723
	Final Order No. 238.....	725
	Resolution .....	725
	Hearing Order No. 828.....	726
	Opinion of Commissioner Bassett.....	726
	Resolution .....	727
Inspection, overhauling, repair and equipment of cars:		
	Hearing Order No. 271.....	591
	Final Order No. 433.....	593
	Rehearing Order No. 563.....	595
	Final Order No. 596.....	595
	Extension Order No. 779.....	598
Overhauling cars — surface car congestion on Brooklyn bridge:		
	Report of Commissioner Bassett.....	598
Delays caused by cars of, during September, 1907, and September, 1908, compared and analyzed:		
	Report of Commissioner Bassett.....	599
Defective switches and tracks at Main and Prospect streets and at Main and Fulton streets:		
	Dismissal Order No. 219.....	621
Repair of tracks, frogs and switches:		
	Hearing Order No. 192.....	622
	Final Order No. 309.....	622
Ten-cent fare to Coney Island:		
	Complaint Order No. 275a.....	248
	Hearing Order No. 350.....	248
Ten-cent fare to Coney Island:		
	Complaint Order No. 275.....	248
	Extension Order No. 305.....	248
	Hearing Order No. 352.....	248
Crossing at Atlantic and Franklin avenues:		
	Hearing Order No. 692.....	199
	Final Order No. 727.....	200
Extending time to file information regarding cars, fenders, wheel-guards and brakes:		
	Extension Order No. 520.....	309
Extending time to file annual report:		
	Extension Orders Nos. 748, 748c.....	270
Extending time to file information regarding motors, car bodies and car trucks:		
	Extension Order No. 519.....	307

COMPANY.	SUBJECT.	PAGE.
<b>Coney Island and Gravesend Railway Company:</b>		
Ten-cent fare to Coney Island:		
Complaint Order No. 276.....	247	
Extension Order No. 304.....	247	
Hearing Order No. 353.....	247	
Ten-cent fare to Coney Island:		
Complaint Order No. 276a.....	247	
Extension Order No. 303.....	247	
Hearing Order No. 351.....	247	
<b>Consolidated Gas Company of New York:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277	
<b>Consolidated Telegraph and Electrical Subway Company:</b>		
Certain corporate documents required to be filed:		
Order No. 247.....	294	
<b>Cranford Company:</b>		
Charges of the Commissioner of Labor against, for alleged violations of the Labor Law:		
Hearing Order No. 574.....	718	
Opinion of Commissioner Eustis.....	718	
Final Order No. 602.....	719	
<b>DeKalb Avenue and North Beach Railroad Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 748, 748c.....	270	
<b>Demurrage</b> (see Rates, Fares and Charges, page 231).		
<b>Department of Water Supply, Gas and Electricity:</b>		
Repairs in water mains — Bills:		
Opinion of counsel.....	325	
<b>Dry Dock, East Broadway and Battery Railroad Company:</b>		
Form to be used in reporting cars repaired and ready for inspection:		
Order No. 261.....	297	
Increase of service on the Grand street crosstown line and Grand and Desbrosses line to Brooklyn:		
Hearing Order No. 397.....	434	
Opinion of Commissioner Maltbie.....	435	
Final Order No. 421.....	436	
Final Order No. 472.....	437	
Unsanitary conditions of horse cars, Canal street line:		
Complaint Order No. 287.....	561	
Overhauling and repair of cars:		
Hearing Order No. 234.....	604	
Opinion of Commissioner Maltbie.....	605	
Final Order No. 260.....	606	
Hearing Order No. 332.....	607	
Rehearing Order No. 341.....	608	
Opinion of Commissioner Maltbie.....	608	

COMPANY.	SUBJECT.	PAGE.
<b>Dry Dock, East Broadway and Battery Railroad Company.—Continued:</b>		
Overhauling and repair of cars.—Continued:		
	Final Order No. 365.....	609
	Opinion of Commissioner Maltbie.....	609
	Final Orders Nos. 403, 455.....	610
	Opinion of Counsel.....	611
	Extension Order No. 737.....	612
Extending time to file annual report:		
	Extension Orders Nos. 748b, 748g.....	271
Extending time to file information regarding motors, car bodies and car trucks:		
	Extension Order No. 484.....	307
Extending time to file information regarding cars, fenders, wheel-guards and brakes:		
	Extension Order No. 487.....	309
<b>East River Gas Company of Long Island City:</b>		
Extending time to file annual report:		
	Extension Orders Nos. 812b, 812d.....	278
<b>East River Terminal Railroad Company:</b>		
Application for a certificate of convenience and a necessity:		
	Opinion of Counsel.....	161
	Hearing Order No. 634.....	162
	Report of Commissioner Bassett.....	163
	Opinion of Commissioner Bassett.....	166
	Certificate of convenience and a necessity.....	167
<b>Edenwald Street Railway Company:</b>		
Extending time to file annual report:		
	Extension Order No. 748a.....	270
<b>Edison Electric Illuminating Company of Brooklyn:</b>		
Extending time to file annual report:		
	Extension Orders Nos. 812, 812b.....	277
<b>Electrical Conduits:</b>		
Right of United States government to use existing conduits or subways under the streets of the city of New York:		
	Opinion of Counsel.....	711
<b>Electrical Corporations:</b>		
Prevention of discrimination and unreasonable preference:		
	Opinion of Counsel.....	278
	Hearing Order No. 822.....	279
	Opinion of Commissioner Maltbie.....	280
	Case No. 822, Final Order.....	286
Regulations prescribing the form and governing the construction and filing of schedules of rates and forms of contracts:		
	Opinion of Counsel.....	286
	Hearing Order No. 823.....	288
	Opinion of Commissioner Maltbie.....	290
	Case No. 823, Final Order.....	291

COMPANY.	SUBJECT.	PAGE.
<b>Electrical Corporations.—Continued:</b>		
“Breakdown service”:		
Report of Commissioner Maltbie.....		704
Investigation of the property franchises and operation of:		
Order No. 205.....		716
Opinion of Counsel.....		717
(See Gas and Electrical Corporations.)		
<b>Empire City Subway Company:</b>		
Certain corporate documents required to be filed:		
Order No. 247.....		294
<b>Flatbush Gas Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....		277
Erection of a gas tank at Nostrand avenue and Winthrop street, Brooklyn:		
Complaint Order No. 534.....		567
Hearing Order No. 548.....		567
Opinion of Commissioner Bassett.....		568
Dismissal Order No. 600.....		568
<b>Fort George Street Railway Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 748d, 748e.....		271
<b>Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company:</b>		
Through routes and joint rates with the Third Avenue Railroad Com- pany and the Central Park, North and East River Railroad Company:		
Hearing Order No. 786.....		260
Extension Order No. 793.....		260
Hearing Order No. 796.....		261
Form to be used in reporting cars repaired and ready for inspection:		
Order No. 261.....		297
Certified copies of conductors' day cards required to be filed:		
Order No. 200.....		318
Service south of One Hundred and Seventeenth street:		
Discontinuance Order No. 589.....		530
Lack of heat on Broadway cars:		
Complaint Order No. 302.....		561
Unsanitary condition of closed cars on Forty-second street crosstown line:		
Complaint Order No. 447.....		600
Hearing Order No. 497.....		600
Opinion of Commissioner Maltbie.....		600
Final Order No. 547.....		600
Overhauling and repair of cars:		
Hearing Order No. 234.....		604
Opinion of Commissioner Maltbie.....		605
Final Order No. 260.....		606

COMPANY.	SUBJECT.	PAGE.
<b>Forty-second street, Manhattanville and St. Nicholas Avenue Railroad Company.</b> —Continued:		
Overhauling and repair of cars.—Continued:		
	Rehearing Order No. 332.....	607
	Rehearing Order No. 341.....	608
	Opinion of Commissioner Maltbie.....	608
	Final Order No. 365.....	609
	Opinion of Commissioner Maltbie.....	609
	Final Orders Nos. 403, 455.....	610
	Opinion of Counsel.....	611
	Extension Order No. 737.....	612
Extending time to file annual report:		
	Extension Orders Nos. 748b, 748g.....	271
<b>Fulton Street Railroad Company:</b>		
Restoration of cars on the Fulton street line:		
	Complaint Order No. 731.....	220
	Extension Order No. 751.....	220
	Hearing Order No. 800.....	220
	Opinion of Counsel.....	220
	Opinion of Commissioner Maltbie.....	221
<b>Gas Corporations:</b>		
General investigation into the condition of:		
	Order No. 651.....	740
Rules and regulations regarding the testing of gas meters:		
	Report of Commissioner Maltbie.....	692
Improvements in and inspection of meters:		
	Hearing Order No. 676.....	713
	Opinion of Commissioner Maltbie.....	713
	Final Order No. 757.....	714
	Final Order No. 758.....	715
<b>Gas and Electrical Corporations:</b>		
Corporate documents required to be filed:		
	Order No. 22a.....	295
Right of companies to charge for service of installing and maintaining pipe or wire connections between mains and consumers' homes:		
	Opinion of Counsel.....	709
Stockholding in:		
	Order No. 137a.....	296
Form of annual reports:		
	Final Order No. 728.....	275
	Final Order No. 851.....	276
	Extension Orders Nos. 812, 812a-812d.....	277
<b>Glendale and East River Railroad Company:</b>		
Extending time to file annual report:		
	Extension Order No. 747.....	264
<b>Harlem River and Portchester Railroad Company:</b>		
Application for permission to operate by the high potential alternating electric current system:		
	Case No. 1001, Hearing Order.....	688

COMPANY.	SUBJECT.	PAGE.
<b>Hudson and Manhattan Railroad Company:</b>		
Application for permission to put into effect a short notice tariff schedule:		
Case No. 1024.....		212
Annual and other reports of companies engaged in interstate commerce:		
Opinion of Counsel.....		272
Opinion of Counsel.....		273
Opinion of Counsel.....		274
Payments on account of franchise:		
Letter of Deputy Comptroller.....		327
Opinion of Counsel.....		327
Application for approval of terminal station under Sixth avenue near West Thirty-third street:		
Order No. 768.....		191
Restoration of pavement on Sixth avenue between Fourteenth and Twenty-third streets:		
Complaint Order No. 705.....		677
Hearing Order No. 720.....		677
Opinion of Commissioner Maltbie.....		678
Discontinuance Order No. 749.....		678
Extending time to file annual report:		
Extension Order No. 748h.....		271
<b>Interborough Rapid Transit Company:</b>		
Application for authority to issue a mortgage of \$55,000,000:		
Hearing Order No. 315.....		120
Opinion of Chairman Wilcox.....		122
Final Order No. 438.....		135
Final Order No. 445.....		136
Letter of Chairman Wilcox.....		138.
Application for permission to make changes in signal system:		
Final Order No. 343.....		193
Final Order No. 343a.....		193
Application for authority to extend operation of the subway from Borough Hall to the Flatbush avenue station:		
Final Order No. 444.....		194
Application for authority to construct an additional platform at Bowling Green station:		
Hearing Order No. 557.....		194
Resolution .....		194
Application for permission to discontinue express service on the third track of the subway between Ninety-sixth street and One Hundred Thirty-seventh street on Saturday afternoons:		
Final Order No. 639.....		195
Application for authority to operate in the subway from Two Hundred and Thirtieth street to Two Hundred and Fortieth street:		
Final Order No. 650.....		195

<u>COMPANY.</u>	<u>SUBJECT.</u>	<u>PAGE.</u>
<b>Interborough Rapid Transit Company.—Continued:</b>		
Application for permission to maintain a temporary spur connection between its main power house and the tracks of the New York Central and Hudson River Railroad Company:		
Case No. 1011, Permit.....	196	
Operation of trains in the subway at Twentieth street on January 11, 1908:		
Order No. 199.....	320	
Additional service in the subway:		
Order No. 259.....	339	
Extension of Broadway express service to Kingsbridge and of local service to Dyckman street:		
Hearing Order No. 408.....	532	
Opinion of Commissioner Eustis.....	532	
Dismissal Order No. 556.....	533	
Failure of subway trains to stop at Mott avenue station:		
Complaint Order No. 781.....	343	
Hearing Order No. 813.....	343	
Side Doors—Changes in cars now in use and type of cars to be purchased for future use in the subway:		
Hearing Order No. 270.....	344	
Opinion of Commissioner Eustis.....	344	
Final Order No. 629.....	346	
Extension Order No. 783.....	347	
Extension Order No. 835.....	348	
Case No. 629, Extension Order.....	348	
Lack of designation signs in subway trains:		
Case No. 1005, Complaint Order.....	349	
Case No. 1005, Extension Order.....	349	
Case No. 1005, Hearing Order.....	349	
Inconvenient location of ticket box at Kingsbridge subway station:		
Complaint Order No. 306.....	340	
Discontinuance Order No. 309.....	340	
Ticket booths in the subway station at Brooklyn Bridge:		
Complaint Order No. 335.....	340	
Dismissal Order No. 394.....	340	
Failure to run elevators at Mott avenue and One Hundred and Forty-ninth street after 1 a. m.:		
Complaint Order No. 293.....	642	
Discontinuance Order No. 329.....	642	
Placing and maintenance of vending and weighing machines in the Brooklyn-Manhattan subway:		
Hearing Order No. 839.....	348	
Suggested change of name of the subway station at Sixty-sixth street to "Lincoln Square":		
Case No. 1023, Hearing Order.....	349	
Proposed station on Columbus avenue at Ninety-ninth street:		
Hearing Order No. 254.....	641	

COMPANY.	SUBJECT.	PAGE.
<b>Interborough Rapid Transit Company.—Continued:</b>		
Advisability of building a subway station at or near One Hundred and Ninetieth street on the Broadway division:		
Case No. 1021, Hearing Order.....		349
Leak in patent lights at foot of stairs, subway station, Forty-second street side of Broadway:		
Complaint Order No. 460.....		341
Tools for use in case of accident:		
Opinion of Commissioner Eustis.....		370
Dismissal Order No. 232.....		370
Emergency organization for use in case of accident:		
Hearing Order No. 477.....		341
Enclosures to prevent draughts at One Hundred and Sixty-eighth and One Hundred and Eighty-first street stations:		
Final Order No. 402.....		342
Final Order No. 560.....		343
Proposal that the city of New York should purchase the "Steinway Tunnel":		
Letter of Chairman Willcox.....		350
Report entitled "The Steinway Tunnel".....		351
Report of Committee.....		356
Case No. 1029, Resolution.....		367
Ticket sales at Fulton street, Wall street, Bowling Green and Borough Hall subway stations from January 2 to January 16, 1908:		
Order No. 208.....		315
Removal of side tracks in Twelfth avenue and Fifty-ninth street:		
Order No. 595.....		343
Smoke nuisance at power house at foot of West Fifty-ninth street:		
Hearing Order No. 553.....		568
Opinion of Commissioner Eustis.....		569
Dismissal Order No. 616.....		569
Extending time to file annual report:		
Extension Order No. 748c.....		271
Extending time to file information regarding motors, car bodies and car trucks:		
Extension Orders Nos. 540, 579, 621.....		307
Despatchers and "trouble reports" on subway and elevated lines:		
Order No. 227.....		298
Temperature in cars on elevated lines:		
Hearing Order No. 250.....		562
Additional station signs on all elevated roads:		
Hearing Order No. 495.....		653
Final Order No. 491.....		654
Extension Order No. 675.....		655
Increase in number of trains on Second avenue elevated:		
Final Order No. 361.....		439
Rehearing Order No. 392:.....		440

COMPANY.	SUBJECT.	PAGE.
<b>Interborough Rapid Transit Company.—Continued:</b>		
Service on Second avenue elevated between 1 a. m. and 5 a. m.:		
Hearing Order No. 374.....	530	
Opinion of Commissioner Eustis.....	531	
Dismissal Order No. 426.....	531	
Inadequate stairway facilities at Eightieth street, Second avenue elevated:		
Complaint Order No. 369.....	646	
Extension Order No. 399.....	646	
Dismissal Order No. 467.....	646	
Additional stairway at Eighty-sixth street on the Second avenue elevated:		
Complaint Order No. 370.....	646	
Extension Order No. 400.....	646	
Dismissal Order No. 468.....	646	
Removal of station on Second avenue elevated from Allen and Rivington streets to Allen and Delancey streets:		
Opinion of Counsel.....	647	
Hearing Order No. 366.....	648	
Dismissal Order No. 499.....	649	
Additions to Ninety-second street station, Second avenue elevated:		
Hearing Order No. 226.....	656	
Final Order No. 494.....	657	
Extension Order No. 529.....	658	
Rehearing Order No. 545.....	658	
Final Order No. 795.....	659	
Service of the Third avenue elevated road to South Ferry at midday:		
Hearing Order No. 241.....	438	
Dismissal Order No. 290.....	438	
Skipping Eighty-fourth street station on Third avenue elevated:		
Hearing Order No. 647.....	533	
Opinion of Commissioner Eustis.....	534	
Discontinuance Order No. 654.....	534	
Service on the Third avenue elevated:		
Final Order No. 221.....	441	
Rehearing Order No. 246.....	442	
Final Order No. 337.....	443	
Opinion of Commissioners Eustis and Maltbie.....	445	
Suspension Order No. 569.....	444	
Extension Orders Nos. 617, 630, 699, 814.....	444	
Progress in making changes at the One Hundred and Thirty-eighth street and One Hundred and Forty-ninth street stations of the Third avenue elevated:		
Order No. 218.....	316	
Signs and additional platform at City Hall station of Third avenue elevated:		
Hearing Order No. 373.....	643	
Final Order No. 546.....	644	

COMPANY.	SUBJECT.	PAGE.
<b>Interborough Rapid Transit Company.—Continued:</b>		
Enlargement of southbound platform at One Hundred and Sixteenth street station on Third avenue elevated:		
Hearing Order No. 552.....		651
Enlargement of men's toilet room at Eighty-ninth street station on Third avenue elevated:		
Hearing Order No. 593.....		651
Opinion of Commissioner Eustis.....		652
Final Order No. 624.....		652
Additional stairway at the Eighty-ninth street station on the Third avenue elevated:		
Complaint Order No. 362.....		655
Hearing Order No. 409.....		655
Final Order No. 498.....		655
Extension Orders Nos. 682, 753.....		656
Inadequate transportation facilities at stations on the Third avenue elevated in the Borough of The Bronx:		
Complaint Order No. 791.....		659
Extension Order No. 810.....		659
Additional stairway at One Hundred Sixty-first street station on the Third avenue elevated:		
Hearing Order No. 410.....		660
Final Order No. 832.....		660
Service on the Sixth avenue elevated:		
Final Order No. 266.....		444
Opinion of Commissioners Eustis and Maltbie.....		445
Order No. 569.....		446
Extension Orders Nos. 617, 630, 699, 814.....		446
Order modifying final order in Case No. 266.....		447
Service on the Ninth avenue elevated:		
Dismissal Order No. 371.....		438
Escalators at One Hundred Fifty-fifth street elevated station:		
Opinion of Counsel.....		645
Complaint Order No. 386.....		645
Extension Order No. 414.....		645
Hearing Order No. 459.....		645
Progress in construction of additional stairways at Cortland and Greenwich streets:		
Order No. 209.....		316
Escalator at station at One Hundred Twenty-fifth street and Eighth avenue:		
Complaint Order No. 288.....		643
Hearing Order No. 391.....		643
Additions to platforms and stairways at Christopher street station on the Ninth avenue elevated:		
Hearing Order No. 626.....		653
Interstate Commerce (see Rates, Fares and Charges, pages 231, 236).		

COMPANY.	SUBJECT.	PAGE.
<b>Jamaica and South Shore Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 747.....		264
<b>Jamaica Gas Light Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....		277
<b>Jerome Park Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748a.....		270
<b>Joint Rates</b> (see <b>Rates, Fares and Charges</b> , page 237).		
<b>Kingbridge Railway Company:</b>		
Application for approval of agreement with the <b>Third Avenue Railroad Company</b> :		
Hearing Order No. 780.....		187
Opinion of Commissioner Eustis.....		188
Case No. 780, Final Order.....		190
Extending time to file annual report:		
Extension Orders Nos. 748b, 748g.....		271
<b>Kings County Electric Light and Power Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812a, 812b.....		277
<b>Kings County Lighting Company:</b>		
Extending time to file annual report:		
Extension Order No. 812.....		277
<b>Lehigh Valley Railroad Company:</b>		
Question as to jurisdiction of Commission as to demurrage on shipments from without the State:		
Opinion of Counsel.....		231
Opinion of Counsel.....		236
<b>Long Acre Electric Light and Power Company:</b>		
Application for authority to issue \$10,000,000 of preferred stock and \$50,000,000 of bonds to be secured by a mortgage on its property:		
Hearing Order No. 419.....		139
Opinion of Commissioner Maltbie.....		140
Final Order No. 607.....		152
Rehearing Order No. 750.....		153
Final Order No. 797.....		153
<b>Long Island Electric Railway Company:</b>		
Construction of overhead crossing at <b>Jamaica and Hempstead Turnpike</b> , borough of Queens:		
Hearing Order No. 449.....		201
Opinion of Commissioner Bassett.....		202
Final Order No. 543.....		203

SUBJECT.	PAGE.
<b>COMPANY.</b>	
<b>Long Island Electric Railway Company.—Continued:</b>	
Safety precautions at the grade crossing at South street, Jamaica:	
Hearing Order No. 505.....	375
Final Order No. 549.....	376
Extension Orders Nos. 653, 742, 777.....	377
Extension Orders Nos. 834, 856.....	378
Service and equipment on Liberty Avenue line:	
Hearing Order No. 406.....	534
Final Order No. 506.....	535
Exchange of transfers at the intersection of lines on New York avenue near the line of the Brooklyn aqueduct:	
Complaint Order No. 687.....	563
Extension Orders Nos. 698, 711.....	563
<b>Long Island Railroad Company:</b>	
Application for permission to put into effect a short notice tariff schedule:	
Orders Nos. 188, 363.....	212
Orders Nos. 415, 550, 551, 644, 741, 743.....	213
Case No. 1028.....	213
Application for authorization to lay and operate additional tracks on Atlantic avenue:	
Hearing Order No. 655.....	176
Hearing Order No. 787.....	177
Application for permission and approval of a change in location of tracks in the borough of Queens:	
Hearing Order No. 661.....	178
Opinion of Commissioner McCarroll.....	179
Final Order No. 853.....	179
Proposed discontinuance of annex boat plying between Long Island City and Pier 8, East river:	
Complaint Order No. 688.....	225
Opinion of Counsel.....	225
Hearing Order No. 701.....	225
Opinion of Commissioner Bassett.....	228
Dismissal Order No. 841.....	230
Service on East Thirty-fourth street ferry to Long Island City:	
Complaint Order No. 265.....	448
Hearing Order No. 416.....	448
Opinion of Commissioner Bassett.....	449
Dismissal Order No. 535.....	449
Inadequate service on North side division between midnight and 4 a. m.:	
Complaint Order No. 679.....	450
Train service between East New York and Long Island City:	
Rehearing Order No. 193.....	450
Final Order No. 429.....	451
Rehearing Order No. 680.....	452
Final Order No. 712.....	452

COMPANY.	SUBJECT.	PAGE
<b>Long Island Railroad Company.—Continued:</b>		
Question of the power of Commission to require construction of new station at Ralph avenue:		
Opinion of Counsel.....		649
Excessive rate of fare for monthly commutation tickets; lack of service on Whitestone branch:		
Complaint Order No. 300.....		248
Reduction of fare from Flatbush avenue to Railroad avenue from 10 to 5 cents:		
Complaint Order No. 565.....		248
Hearing Order No. 636.....		248
Excessive fare on Atlantic avenue between Jamaica and Flatbush stations:		
Case No. 1022, Complaint Order.....		249
Exacting excess fare within the city limits:		
Opinion of Counsel.....		256
Opinion of Commissioner McCarroll.....		256
Lack of gates at Twenty-second street crossing, College Point:		
Complaint Order No. 322.....		371
Safety precautions at the grade crossing at Fresh Pond road and Sherman street, borough of Queens:		
Hearing Order No. 283.....		371
Opinion of Commissioner Bassett.....		372
Final Order No. 364.....		372
Flagmen at Merrick road grade crossing on the Montauk division at Springfield, Queens county:		
Hearing Order No. 594.....		373
Crossing at Atlantic and Franklin avenues:		
Hearing Order No. 692.....		199
Final Order No. 727.....		200
Safety precautions at the grade crossing at Fresh Pond road and Metropolitan avenue, borough of Queens:		
Hearing Order No. 730.....		374
Final Order No. 772.....		374
Case No. 772, Hearing Order.....		375
Safety precautions at the grade crossing at South street, Jamaica:		
Hearing Order No. 505.....		375
Final Order No. 549.....		376
Extension Orders Nos. 653, 742, 777.....		377
Extension Orders Nos. 834, 856.....		378
Safety precautions at the grade crossing at Hollywood and Sea View avenues in the borough of Queens:		
Hearing Order No. 721.....		379
Opinion of Commissioner Bassett.....		379
Final Order No. 857.....		380
High tension wires:		
Report of Commissioner Eustis.....		679

COMPANY.	SUBJECT.	PAGE.
<b>Long Island Railroad Company.</b>	—Continued:	
Opening of Chester street across the tracks of, between Riverdale avenue and East Ninety-eighth street in the borough of Brooklyn:		
Hearing Order No. 430.....		200
Opening Avenue P across the tracks of, between Ocean avenue and Gravesend avenue, Brooklyn:		
Hearing Order No. 555.....		204
Application of the city of New York to open Hegeman avenue across the tracks of:		
Hearing Order No. 230-D-1.....		207
Opinion of Commissioner Bassett.....		208
Final Order No. 490.....		209
Construction of overhead crossing at Jamaica and Hempstead turnpike, borough of Queens:		
Hearing Order No. 449.....		201
Opinion of Commissioner Bassett.....		202
Final Order No. 543.....		203
Proposed deflection of a part of Atlantic avenue and relocation of the westbound platform at East New York:		
Case No. 1000, Hearing Order.....		627
Gas line through Sunnyside yard:		
Complaint Order No. 778.....		740
Extension Order No. 803.....		740
Hearing Order No. 826.....		740
Smoke in Atlantic avenue tunnel:		
Opinion of Commissioner McCarroll.....		570
<b>Manhattan Railway Company:</b>		
Application for authority to issue \$10,818,000 of bonds:		
Hearing Order No. 501.....		154
Opinion of Chairman Willcox.....		154
Final Order No. 572.....		158
Application for authority to issue \$804,000 of bonds:		
Hearing Order No. 502.....		159
Opinion of Chairman Willcox.....		154
Final Order No. 573.....		160
Extending time to file annual report:		
Extension Order No. 748c.....		271
<b>Marine Railway Company:</b>		
Extending time to file annual report:		
Extension Order No. 748a.....		270
<b>Metropolitan Street Railway Company:</b>		
Application for approval of agreement to operate road of Central Crosstown Railroad Company under modification of lease:		
Hearing Order No. 622.....		183

COMPANY.	SUBJECT.	PAGE.
<b>Metropolitan Street Railway Company.—Continued:</b>		
Application for approval of agreement to operate road, etc.—Continued:		
Hearing Order No. 622a.....	184	
Opinion of Commissioner Eustis.....	184	
Final Order No. 637.....	185	
Establishment of through routes and joint rates with Central Park,		
North and East River Railroad Company:		
Hearing Order No. 670.....	249	
Final Order No. 673.....	250	
Order No. 693.....	251	
Hearing Order No. 752.....	251	
Final Order No. 815.....	252	
Rehearing Order No. 821.....	253	
Rehearing Order No. 825.....	254	
Final Order No. 830.....	254	
Service on Eighth Street Crosstown line to Brooklyn:		
Hearing Order No. 452.....	481	
Case No. 1015, Hearing Order.....	482	
Opinion of Commissioner Maltbie.....	483	
Case No. 1015, Final Order.....	484	
Failure to operate cars on the One Hundred and Forty-fifth Street		
Crosstown line after midnight because of storing of cars:		
Complaint Order No. 710.....	536	
Withdrawal of service on Avenue A between Fourteenth street and		
Twenty-third street:		
Complaint Order No. 809.....	536	
Service on Eighth Street Crosstown line to East Tenth street ferry:		
Hearing Order No. 451.....	484	
Case No. 1016, Hearing Order.....	485	
Opinion of Commissioner Maltbie.....	483	
Case No. 1016, Final Order.....	486	
Inadequate service and equipment on Fourth and Madison avenue		
line:		
Hearing Order No. 836.....	623	
Use of Macomb's Lane as a storage yard:		
Complaint Order No. 690.....	574	
Storing of cars on Lexington avenue between One Hundred and Six-		
teenth and One Hundred and Twenty-ninth streets:		
Complaint Order No. 677.....	575	
Discontinuance Order No. 713.....	575	
Storing of cars on Eighth avenue between One Hundred and Fifty-		
fifth and One Hundred and Fifty-ninth streets:		
Complaint Order No. 831.....	575	
Noise caused by operation of cars at Fifty-third street and Sixth		
avenue:		
Case No. 1013, Complaint Order.....	576	
Case No. 1013, Hearing Order.....	576	
Receipts and expenses for a thirty-day period:		
Order No. 669.....	314	

COMPANY.	SUBJECT.	PAGE.
<b>Nassau Electric Railroad Company:</b>		
Application for authority to issue a mortgage of \$5,000,000.		
Opinion of Commissioner McCarroll.....		112
Final Order No. 642.....		114
<b>Application for permission to construct extensions in Kings county:</b>		
Hearing Order No. 491.....		180
<b>Inadequate service on holidays and Sundays — Fulton street line at Utica avenue:</b>		
Complaint Order No. 312.....		453
<b>Increase of service on Seventh avenue line:</b>		
Hearing Order No. 360.....		453
<b>Increase of service on Union street line:</b>		
Hearing Order No. 395.....		490
<b>Operation of freight cars on Marcy avenue:</b>		
Complaint Order No. 734.....		537
Extension Order No. 763.....		537
Hearing Order No. 838.....		537
<b>Operation of trains and surface cars at Sixty-fifth street and Third avenue terminal, Brooklyn:</b>		
Complaint Order No. 375.....		527
Extension Orders Nos. 396, 431, 441.....		527
Hearing Order No. 532.....		527
Opinion of Commissioner Bassett.....		529
Final Order No. 597.....		529
<b>Running of open cars in inclement weather on Fifteenth street and Marcy avenue surface lines:</b>		
Complaint Order No. 480.....		558
<b>Failure to stop cars at the north end of the bridge over Coney Island creek:</b>		
Complaint Order No. 633.....		507
Hearing Order No. 658.....		507
Final Order No. 729.....		507
<b>Service on St. Johns place line:</b>		
Hearing Order No. 764.....		456
Statement by Commissioner Maltbie.....		456
Final Order No. 832.....		457
Extension Order No. 847.....		457
Case No. 832, Extension Orders.....		458
<b>Extension of Fifth avenue surface line in Brooklyn to Bay Ridge avenue and Eighty-sixth street — Waiting-room at Bay Ridge and Fifth avenues:</b>		
Hearing Order No. 294.....		628
Final Order No. 427.....		629
<b>Conditions of cars and method of transferring passengers on the Fifth avenue surface line:</b>		
Complaint Order No. 539.....		562
<b>Repair of track on Bergen street — Service on Bergen street line and St. Johns place line:</b>		
Hearing Order No. 331.....		624

COMPANY.	SUBJECT.	PAGE.
Nassau Electric Railroad Company.—Continued:		
Noise caused by operation of cars of the Bergen street and Nostrand avenue line:		
Case No. 1004, Complaint Order.....	577	
Noise caused by cars at curve at Ocean avenue and Avenue F.:		
Complaint Order No. 295.....	576	
Hearing Order No. 382.....	576	
Final Order No. 442.....	576	
Station at Twenty-fifth avenue on the West End line:		
Complaint Order No. 253.....	661	
Hearing Order No. 334.....	661	
Dismissal Order No. 379.....	662	
Turnstile at Sixteenth street station, Fifth avenue elevated line:		
Complaint Order No. 328.....	662	
Extension Order No. 380.....	662	
Lack of shelter at Thirty-ninth street and Church avenue:		
Complaint Order No. 837.....	638	
Ten-cent fare to Coney Island:		
Complaint Order No. 276.....	247	
Extension Order No. 304.....	247	
Hearing Order No. 353.....	247	
Ten-cent fare to Coney Island:		
Complaint Order No. 276a.....	247	
Extension Order No. 303.....	247	
Hearing Order No. 351.....	247	
Repairs to pavement on Marcy avenue:		
Hearing Order No. 191.....	674	
Letter of Chairman Willcox.....	668	
Opinion of Commissioner Bassett.....	668	
Dismissal Order No. 317.....	674	
Repair of pavement and grading of tracks on Farragut road:		
Hearing Order No. 189.....	675	
Letter of Chairman Willcox.....	668	
Opinion of Commissioner Bassett.....	668	
Final Order No. 316.....	675	
Extension Orders Nos. 338, 356.....	676	
Final Order No. 388.....	676	
Extension Order No. 439.....	677	
Neglect to pave and keep in repair the street between and adjoining rails:		
Hearing Order No. 190.....	667	
Letter of Chairman Willcox.....	668	
Opinion of Commissioner Bassett.....	668	
Final Order No. 318.....	671	
Extension Orders Nos. 339, 357.....	672	
Final Order No. 389.....	672	
Extension Order No. 440.....	674	
Erection of gates at Eighty-sixth street crossing on the West End line:		
Opinion of Commissioner McCarroll.....	381	

COMPANY.	SUBJECT.	PAGE.
<b>Nassau Electric Railroad Company.—Continued:</b>		
Erection of gates at Eighty-sixth street, etc. —Continued:		
Final Order No. 585.....	382	
Extension Orders Nos. 732, 802.....	382	
Case No. 585, Extension Order.....	383	
<b>New Amsterdam Gas Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277	
<b>Newtown Gas Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277	
<b>New York and Long Island Traction Company:</b>		
Exchange of transfers at the intersection of lines on New York avenue, near the line of the Brooklyn aqueduct:		
Complaint Order No. 687.....	563	
Extension Orders Nos. 698, 711.....	563	
<b>New York and Port Chester Railroad Company:</b>		
Progress made in constructing line:		
Hearing Order No. 521.....	316	
Extension Order No. 546.....	317	
Inspection and examination of accounts, records and memoranda:		
Order No. 586.....	321	
<b>New York and Queens County Railroad Company:</b>		
Reduction of running time between Jamaica and Flushing and through cars between Jamaica and Long Island City by way of Flushing:		
Dismissal Order No. 248.....	537	
Failure to run cars to the Corona terminus from Long Island City:		
Complaint Order No. 773.....	538	
Hearing Order No. 833.....	538	
Opinion of Commissioner Bassett.....	538	
Case No. 833, Final Order.....	539	
Service on Calvary Cemetery surface line in Queens:		
Hearing Order No. 321.....	458	
Final Order No. 500.....	459	
Service on Jamaica-Flushing line:		
Complaint Order No. 267.....	460	
Hearing Order No. 559.....	460	
Opinion of Commissioner Bassett.....	460	
Case No. 559, Dismissal Order.....	461	
Condition of roadbed and trolley poles on Dutch Kills line:		
Complaint Order No. 571.....	625	
Discontinuance Order No. 604.....	626	

COMPANY.	SUBJECT.	PAGE.
<b>New York and Queens County Railroad Company.</b> —Continued:		
Extending time to file annual report:		
Extension Order No. 748c.....		271
<b>New York and Queens Electric Light and Power Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812c.....		277
<b>New York and Queens Gas Company:</b>		
Extending time to file annual report:		
Extension Order No. 812.....		277
<b>New York and Richmond Gas Company:</b>		
Extending time to file annual report:		
Extension Order No. 812a.....		277
<b>New York and Rockaway Beach Railway Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 747, 747b.....		264
<b>New York, Brooklyn and Manhattan Beach Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 747.....		264
<b>New York Central and Hudson River Railroad Company:</b>		
Applications for permission to issue short notice tariff schedules:		
Orders Nos. 333, 570.....		213
Orders Nos. 601, 667, 689, 696, 774, 816, Case No. 1030.....		214
Orders Nos. 320, 581, 648.....		215
Restoration of the Putnam division service:		
Order No. 211.....		461
Hearing Order No. 252.....		461
Opinion of Commissioner Eustis.....		462
Final Order No. 311.....		463
Rehearing Order No. 344.....		464
Opinion of Commissioner Eustis.....		464
Final Order No. 524.....		466
Additional local trains on the Harlem division:		
Hearing Order No. 314.....		467
Final Order No. 538.....		467
Final Order No. 567.....		469
Operation of freight trains on Eleventh avenue:		
Hearing Order No. 745.....		544
Opinion of Commissioner Eustis.....		544
Opinion of Commissioner Eustis.....		547
Case No. 745, Final Order.....		547
Increase of service at University Heights station:		
Complaint Order No. 313.....		541
Hearing Order No. 513.....		541
Opinion of Commissioner Eustis.....		542
Final Order No. 608.....		543

COMPANY.	SUBJECT.	PAGE.
<b>New York Central and Hudson River Railroad Company.—Continued:</b>		
Improvement in and additions to service:		
	Hearing Order No. 279.....	540
	Opinion of Commissioner Eustis.....	540
	Dismissal Order No. 473.....	541
Excess charges upon payment of cash fares upon the Harlem division in the city limits:		
	Opinion of Counsel.....	255
	Complaint Order No. 348.....	255
	Discontinuance Order No. 387.....	255
	Opinion of Counsel.....	256
	Opinion of Commissioner McCarroll.....	256
Smoke, cinders and noise on the Putnam division:		
	Complaint Order No. 206.....	578
	Hearing Order No. 229.....	578
	Final Order No. 289.....	578
Smoke nuisance near One Hundred and Sixty-first street and Ogden avenue:		
	Complaint Order No. 554.....	579
	Discontinuance Order No. 590.....	579
Smoke nuisance at One Hundred and Thirty-seventh street and River- side Drive:		
	Complaint Order No. 324.....	579
	Hearing Order No. 514.....	579
	Final Order No. 625.....	580
	Final Order No. 686.....	581
Maintenance of overhead high tension transmission system:		
	Complaint Order No. 231.....	680
	Hearing Order No. 289.....	680
	Opinion of Commissioner Eustis.....	680
	Final Order No. 700.....	687
Additional safety appliances and precautions at Two Hundred and Twenty-fifth street grade crossing:		
	Hearing Order No. 212.....	383
	Final Order No. 258.....	384
Condition of tracks and crossings at yards at Thirtieth street on the west side of Tenth avenue:		
	Complaint Order No. 284.....	626
	Hearing Order No. 346.....	626
	Dismissal Order No. 412.....	626
Additional flagmen along Eleventh avenue:		
	Hearing Order No. 646.....	385
	Opinion of Commissioner Eustis.....	385
	Final Order No. 659.....	386
	Hearing Order No. 697.....	387
	Final Order No. 707.....	388
Plan for relieving city streets from freight traffic and for removing Eleventh avenue track from street surface:		
	Hearing Order No. 784.....	629

COMPANY.	SUBJECT.	PAGE.
<b>New York Central and Hudson River Railroad Company.</b> —Continued:		
Opening of West Two Hundred and Thirty-fourth street across the tracks of the Putnam division (application of the city of New York):		
Hearing Order No. 278.....		210
Application for approval of extension of time for completion of depressing tracks and constructing viaducts and bridges:		
Hearing Order No. 576.....		211
Application of Union Railway Company of New York city for approval of construction of street surface railway crossing, Putnam division tracks, at Two Hundred and Thirtieth street:		
Hearing Order No. 770.....		211
Rebates—Loss of baggage:		
Opinion of Counsel.....		238
<b>New York City Interborough Railway Company:</b>		
Petition for approval of change of name:		
Final Order No. 606.....		198
Opinion of Counsel.....		198
Delay in commencing operation of Tremont avenue line from One Hundred and Eighty-first street to West Farms; increase in service from One Hundred and Eighty-first street to Bronx Park:		
Order for answer No. 210.....		549
Hearing Order No. 242.....		549
Hearing Order No. 242a.....		550
Final Order No. 308.....		551
Rehearing Order No. 736.....		552
Opinion of Commissioner Eustis.....		552
Final Order No. 798.....		553
Discontinuance of service of line which formerly ran up Southern boulevard from One Hundred and Eightieth street over One Hundred and Eighty-ninth street and Aqueduct avenue to Washington Bridge:		
Case No. 1025, Complaint Order.....		554
Lack of shelter on Aqueduct avenue line:		
Extension Order No. 204.....		663
Rehearing Order No. 214.....		663
Final Order No. 251.....		664
Application for permission to issue short notice tariff schedule:		
Order No. 805.....		214
Extending time to file annual report:		
Extension Order No. 748c.....		271
Desirability of diverting traffic from subway to elevated lines:		
Opinion of Commissioner Eustis.....		553
Failure to construct railroad through the borough of The Bronx for which franchises were obtained in 1903:		
Complaint Order No. 478.....		630
Extension Order No. 516.....		630
Hearing Order No. 588.....		630

COMPANY.	SUBJECT.	PAGE.
<b>New York City Railway Company:</b>		
Application for approval of agreement for operation of road of Central Crosstown Railroad:		
Hearing Order No. 622.....	183	
Hearing Order No. 622a.....	184	
Opinion of Commissioner Eustis.....	184	
Final Order No. 637.....	185	
Service on the Twenty-third street crosstown line:		
Hearing Order No. 390.....	470	
Opinion of Commissioner Maltbie.....	471	
Final Order No. 422.....	472	
Service on the Fourteenth Street and Williamsburg Bridge line:		
Hearing Order No. 453.....	473	
Service on Christopher and East Twenty-third street ferry line:		
Hearing Order No. 454.....	474	
Service on Eighty-sixth street crosstown line:		
Hearing Order No. 463.....	475	
Service on Eighth avenue line — Company must provide for unusual circumstances:		
Letter of Chairman Wilcox.....	548	
Service on Eighth avenue line:		
Hearing Order No. 436.....	476	
Opinion of Commissioner Maltbie.....	477	
Final Order No. 489.....	478	
Extension Order No. 507.....	478	
Service on Lexington avenue line:		
Hearing Order No. 405.....	479	
Opinion of Commissioner Maltbie.....	480	
Final Order No. 423.....	480	
Extension Order No. 508.....	481	
Turning back of cars marked "Polo Grounds" at One Hundred and Fifty-fifth street on Eighth avenue surface line:		
Complaint Order No. 527.....	555	
Insufficient service over Williamsburg Bridge between 11 p. m. and 3 a. m.:		
Complaint Order No. 446.....	411	
Discontinuance Order No. 530.....	412	
Service on Eighth street crosstown line to Brooklyn:		
Hearing Order No. 452.....	481	
Case No. 1015, Hearing Order.....	482	
Opinion of Commissioner Maltbie.....	483	
Case No. 1015, Final Order.....	484	
Service on Eighth street crosstown line to East Tenth street ferry:		
Hearing Order No. 451.....	484	
Case No. 1016, Hearing Order.....	485	
Opinion of Commissioner Maltbie.....	483	
Case No. 1016, Final Order.....	486	
Form to be used in reporting cars repaired and ready for inspection:		
Order No. 225.....	297	

COMPANY.	SUBJECT.	PAGE.
<b>New York City Railway Company.</b> —Continued:		
Overhauling and equipping closed cars:		
Hearing Order No. 466.....	601	
Opinion of Commissioner Maltbie.....	603	
Final Order No. 544.....	603	
Number and type of cars owned or operated July 1, 1907, and number since purchased:		
Order No. 611.....	309	
Duty of receivers of to file annual reports:		
Opinion of Counsel.....	727	
Overhauling and repair of cars:		
Hearing Order No. 234.....	604	
Opinion of Commissioner Maltbie.....	605	
Final Order No. 260.....	606	
Rehearing Order No. 332.....	607	
Rehearing Order No. 341.....	608	
Opinion of Commissioner Maltbie.....	608	
Final Order No. 365.....	609	
Opinion of Commissioner Maltbie.....	609	
Final Orders Nos. 403, 455.....	610	
Opinion of Counsel.....	611	
Extension Order No. 737.....	612	
Storing of cars in streets:		
Letter of Chairman Wilcox.....	573	
Appraisal of property of:		
Order No. 575.....	692	
<b>New York Connecting Railroad Company:</b>		
Application for an extension of time within which to secure consents of adjoining property owners:		
Order No. 235, Certificate of extension of time.....	197	
Extending time to file annual report:		
Extension Orders Nos. 748b, 748d.....	270	
<b>New York Dock Company:</b>		
Question as to whether the locomotive boilers of the company were subject to inspection and test under Railroad Law, §§ 49a, 49b, 49c:		
Opinion of Counsel.....	730	
<b>New York Edison Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277	
Cinder nuisance:		
Opinion of Counsel.....	571	
Hearing Order No. 808.....	572	
Opinion of Commissioner Maltbie.....	572	
<b>New York Mutual Gas Light Company:</b>		
Extending time to file annual report:		
Extension Order Nos. 812, 812b.....	277	

COMPANY.	SUBJECT.	PAGE.
<b>New York, New Haven and Hartford Railroad Company:</b>		
Application for permission to issue short notice tariff schedule:		
Order No. 561.....	215	
Application for permission to operate the Harlem River and Port- chester Railroad by a high potential, alternating electric cur- rent system:		
Case No. 1001, Hearing Order.....	688	
Smoke nuisance at Harlem river yard:		
Hearing Order No. 367.....	582	
Final Order No. 512.....	582	
Rehearing Order No. 844.....	583	
Unsanitary manner of loading manure cars at the Harlem river yard:		
Complaint Order No. 666.....	583	
Hearing Order No. 790.....	583	
Use of soft coal:		
Complaint Order No. 327.....	584	
Discontinuance Order No. 393.....	584	
Improvement in and addition to service:		
Hearing Order No. 279.....	540	
Opinion of Commissioner Eustis.....	540	
Dismissal Order No. 473.....	541	
<b>New York Transfer Company:</b>		
Failure to refund excess charge for delivery of trunk:		
Complaint Order No. 385.....	257	
Discontinuance Order No. 401.....	257	
<b>New York, Westchester and Boston Railway Company:</b>		
Application for a certificate of convenience and a necessity:		
Hearing Order No. 811.....	167	
Failure to construct the Westchester road:		
Order No. 274.....	317	
Inspection and examination of accounts, records and memoranda:		
Order No. 586.....	321	
<b>New York, Westchester and Connecticut Traction Company:</b>		
Place of filing annual reports:		
Opinion of Counsel.....	271	
<b>Northern Union Gas Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277	
<b>Ocean Electric Railway Company:</b>		
Application for consent and approval to the relocation of tracks at Rockaway Park:		
Hearing Order No. 583.....	181	
Final Order No. 609.....	182	
Extending time to file annual report:		
Extension Orders Nos. 748, 748d.....	270	

COMPANY.	SUBJECT.	PAGE.
<b>Pelham Park Railroad Company:</b>		
Application for approval of change of motive power:		
Hearing Order No. 806.....	171	
Opinion of Counsel.....	169	
Final Order No. 842.....	171	
Extending time to file information regarding cars, fenders, wheel-guards and brakes:		
Extension Order No. 509.....	309	
Extending time to file annual report:		
Extension Order No. 748a.....	270	
Improvements in and additions to the service and equipment:		
Hearing Order No. 428.....	613	
Final Order No. 568.....	614	
Extension Order No. 619.....	614	
Extension Order No. 703.....	615	
<b>Pennsylvania Tunnel and Terminal Railroad Company:</b>		
Gas line through Sunnyside yard:		
Complaint Order No. 778.....	740	
Extension Order No. 803.....	740	
Hearing Order No. 826.....	740	
<b>Prospect Park and Coney Island Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748.....	270	
<b>Queens Borough Gas and Electric Company:</b>		
Extending time to file annual report:		
Extension Order No. 812.....	277	
<b>Rates, Fares and Charges:</b>		
Letter of Chairman Willcox.....	230	
Opinion of Counsel.....	231	
Opinion of Counsel.....	236	
Letter of Chairman Willcox.....	237	
Opinion of Counsel.....	238	
<b>Rebates (see Rates, Fares and Charges, page 238).</b>		
<b>Receivers:</b>		
Jurisdiction of Commission over:		
Opinion of Counsel.....	727	
(See also Opinion of Counsel, page 274.)		
<b>Richmond Hill and Queens County Gas Light Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277	
<b>Richmond Light and Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748.....	270	
Service and equipment:		
Final Order No. 185.....	486	
Rehearing Order No. 354.....	488	
Final Order No. 377.....	488	

COMPANY.	SUBJECT.	PAGE.
<b>Richmond Light and Railroad Company.</b> —Continued:		
Exchange of transfers with the Staten Island Midland Railroad Company:		
	Complaint Order No. 702.....	257
	Extension Order No. 714.....	257
	Hearing Order No. 739.....	257
<b>Sea Beach Railway Company:</b>		
Ten-cent fare to Coney Island:		
	Complaint Order No. 276a.....	247
	Extension Order No. 303.....	247
	Hearing Order No. 351.....	247
Re-establishment of station at Kings Highway:		
	Complaint Order No. 518.....	664
	Discontinuance Order No. 632.....	664
Failure to stop New York trains at Luna Park station:		
	Complaint Order No. 330.....	555
	Discontinuance Order No. 418.....	555
Failure of local trains to stop at Avenue S.:		
	Case No. 1008, Complaint Order.....	556
	Case No. 1008, Hearing Order.....	556
<b>Second Avenue Railroad Company:</b>		
Extending time to file annual report:		
	Extension Order No. 748a.....	270
<b>South Brooklyn Railroad Company:</b>		
Increase of service on Union street line:		
	Hearing Order No. 395.....	490
Extension of service from West Twelfth street to West Thirty-fifth street on Surf avenue, Coney Island:		
	Complaint Order No. 272.....	258
	Extension Orders Nos. 325, 411, 482.....	258
	Hearing Order No. 526.....	258
	Opinion of Commissioner Bassett.....	258
	Dismissal Order No. 599.....	258
Extension of short line to Parkville station:		
	Hearing Order No. 359.....	556
	Opinion of Commissioner Bassett.....	557
	Dismissal Order No. 532.....	557
Discontinuance of train stops at Kensington station on Culver line:		
	Complaint Order No. 502.....	558
	Hearing Order No. 638.....	558
	Opinion of Commissioner Eustis.....	558
	Dismissal Order No. 656.....	559
Noisy operation of freight and ash cars through Vanderbilt avenue:		
	Complaint Order No. 685.....	584
	Hearing Order No. 704.....	584
	Dismissal Order No. 840.....	584
Operation of freight cars on Marcy avenue:		
	Complaint Order No. 734.....	537

COMPANY.	SUBJECT.	PAGE.
<b>South Brooklyn Railroad Company.</b> —Continued:		
Operation of freight cars on Marcy avenue.—Continued:		
Extension Order No. 763.....	537	
Hearing Order No. 838.....	537	
Cinder platforms on Gravesend avenue:		
Hearing Order No. 184.....	665	
Opinion of Commissioner Bassett.....	665	
Final Order No. 249.....	666	
Running of open cars in inclement weather on Fifteenth street and Marcy avenue surface lines:		
Complaint Order No. 580.....	558	
Ten-cent fare to Coney Island:		
Complaint Order No. 276a.....	247	
Extension Order No. 303.....	247	
Hearing Order No. 351.....	247	
Safety precautions at Van Sicklen station, Culver line:		
Hearing Order No. 623.....	389	
<b>Southern Boulevard Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748g.....	271	
Extending time to file information regarding motors, car bodies and car trucks:		
Extension Order No. 485.....	307	
Extending time to file information regarding cars, fenders, wheel-guards and brakes:		
Extension Order No. 488.....	309	
<b>Southfield Beach Railroad Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 748, 748f.....	270	
<b>Standard Gas Light Company of the City of New York:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277, 278	
<b>Staten Island Midland Railway Company:</b>		
Exchange of transfers with the Richmond Light and Railroad Company:		
Complaint Order No. 702.....	257	
Extension Order No. 714.....	257	
Hearing Order No. 739.....	257	
Service and equipment:		
Final Order No. 186.....	564	
Rehearing Order No. 355.....	565	
Final Order No. 373.....	565	
Extension Order No. 496.....	567	
Congested condition of Sunday service on the Concord-New Dorp line and the Concord-Port Richmond line:		
Complaint Order No. 785.....	491	
Hearing Order No. 820.....	491	

COMPANY.	SUBJECT.	PAGE.
<b>Staten Island Midland Railway Company.—Continued:</b>		
Failure to stop cars at Steuben street and Richmond road, Concord, Staten Island:		
Case No. 1003, Complaint Order.....		559
Extending time to file annual report:		
Extension Order No. 748.....		270
<b>Staten Island Railway Company:</b>		
Extending time to file information regarding cars, fenders, wheel- guards and brakes:		
Extension Order No. 510.....		309
Extending time to file annual report:		
Extension Order No. 747a.....		265
Lack of passenger service at Great Kills station:		
Complaint Order No. 282.....		491
Refusal to accept tickets presented more than three days after pur- chase for use between St. George and Tottenville:		
Complaint Order No. 301.....		259
Inadequate facilities for handling baggage between Staten Island and Manhattan:		
Complaint Order No. 461.....		503
Opinion of Commissioner McCarroll.....		503
Use of soft coal on locomotives:		
Complaint Order No. 704.....		585
Earnings and operating expenses:		
Order No. 709.....		315
Rates of fare for passage:		
Complaint Order No. 481.....		250
Hearing Order No. 531.....		259
Safety devices at crossings:		
Rehearing Order No. 194.....		393
Opinion of Commissioner McCarroll.....		393
Final Order No. 216.....		394
Extension Orders Nos. 522, 858.....		396
<b>Staten Island Rapid Transit Railway Company:</b>		
Application for permission to issue short notice tariff schedules:		
Orders Nos. 292, 762.....		215
Extending time to file annual report:		
Extension Order No. 747a.....		265
Freight yards near Vanderbilt avenue:		
Final Order No. 462.....		735
Hearing Order No. 492.....		736
Opinion of Commissioner McCarroll.....		737
Final Orders Nos. 537, 568.....		738
Commutation rates:		
Letter of Chairman Wilcox.....		230
Rates of fare for passage:		
Complaint Order No. 481.....		259
Hearing Order No. 531.....		259

COMPANY.	SUBJECT.	PAGE.
<b>Staten Island Rapid Transit Railway Company.—Continued:</b>		
Proposal to discontinue reduced monthly rate to school children:		
Letter of Chairman Willcox.....		230
Safety devices at crossings:		
Rehearing Order No. 195.....		390
Opinion of Commissioner McCarroll.....		391
*	Final Order No. 217.....	391
*	Extension Order No. 523.....	392
<b>Steam Railroad Corporations:</b>		
Form of annual report:		
Final Order No. 612.....		262
Final Order No. 766.....		263
Extension Order Nos. 747, 747a, 747b.....		264
Stockholding in:		
Order No. 136a.....		296
Investigation into the general condition of:		
Opinion of Counsel.....		691
Order No. 615.....		691
Number of car motors, car bodies and car trucks operated:		
Order No. 437.....		298
Order No. 437a.....		303
Extension Orders Nos. 483, 484, 485, 519, 540, 579, 621.....		307
Locomotive boiler tests:		
Letter of Chairman Stevens.....		729
Letter of Chairman Willcox.....		729
Opinion of Counsel.....		730
Assembly bills relating to equipment and operation considered:		
Letter of Chairman Willcox.....		618
<b>Steinway Tunnel:</b>		
Proposal that the city of New York should purchase:		
Letter of Chairman Willcox.....		350
Report entitled "The Steinway Tunnel".....		351
Report of Committee.....		356
Case 1029, Resolution.....		367
<b>Street Railroad Corporations:</b>		
Form of annual reports:		
Final Order No. 613.....		268
Modifying Order No. 767.....		269
Extension Orders Nos. 748, 748a — 748h.....		270
Filing of tariff schedules:		
Order No. 708.....		320
Extension Order No. 722.....		321
Stockholding in:		
Order No. 136a.....		296
Investigation into general condition of:		
Opinion of Counsel.....		691
Order No. 615.....		691

<b>COMPANY.</b>	<b>SUBJECT.</b>	<b>PAGE.</b>
<b>Street Railroad Corporations.—Continued:</b>		
Inventory of property of:		
Order No. 618..... 320		
Appraisals of property of companies in the boroughs of Manhattan and the Bronx:		
Order No. 575..... 692		
Inspection of records, power plants and equipment:		
Opinion of Counsel..... 689		
Number of cars owned and operated and kinds of fenders, wheelguards and brakes with which they are equipped:		
Order No. 443..... 308		
Extension Orders Nos. 486, 487, 488, 509, 510, 520..... 309		
Number of car motors, car bodies and car trucks operated:		
Order No. 437..... 298		
Order No. 437a..... 303		
Extension Orders Nos. 483, 484, 485, 519, 540, 579, 621..... 307		
Notice of proposed purchases of cars, brakes, fenders or other equipment:		
Hearing Order No. 465..... 310		
Opinion of Commissioner Maltbie..... 311		
Final Order No. 584..... 312		
Number of cash fares and number of transfers collected:		
Order No. 603..... 313		
Assembly bills relating to equipment and operation considered:		
Letter of Chairman Willcox..... 618		
<b>Subway Matters:</b>		
Building Department of city has no jurisdiction over subway work:		
Opinion of Counsel..... 321		
Certification of subway contracts by Comptroller:		
Opinion of Counsel..... 322		
Repairs in water mains—Claims presented by Department of Water Supply, Gas and Electricity:		
Opinion of Counsel..... 324		
Payments on account of franchise by Hudson and Manhattan Railroad Company:		
Opinion of Counsel..... 327		
Suggested change of name of Hoyt street station:		
Opinion of Commissioner McCarroll..... 337		
Stoppage of work on Broadway extension:		
Opinion of Commissioner Eustis..... 337		
Sale of buildings acquired on property for rapid transit purposes:		
Resolution of Commissioners of the Sinking Fund..... 338		
Letter of Chairman Willcox..... 338		
Additional stairways to subway platforms at One Hundred and Thirty-seventh and One Hundred and Forty-fifth streets:		
Order No. 291..... 339		
Pneumatic mail tubes in subway—Contracts Nos. 1 and 2:		
Opinion of Counsel..... 330		

COMPANY.	SUBJECT.	PAGE.
<b>Subway Matters.—Continued:</b>		
Maintenance of sewers when completed:		
Opinion of Counsel..... 331		
Broadway-Lexington avenue Rapid Transit route—Location and style of stations:		
Order No. 448..... 341		
Broadway-Lexington avenue Rapid Transit route—Junction point of branches in The Bronx:		
Order No. 511..... 342		
Brooklyn loop lines:		
Opinion of Commission..... 332		
Brooklyn loop lines—Manhattan section:		
Opinion of Commission..... 333		
Fourth avenue subway—Changes in contracts and drawings:		
Letter of Chairman Willcox..... 334		
Fourth avenue subway—Sinking of wells which will interfere with its construction:		
Extracts from minutes..... 335		
Fourth avenue subway—Delay in beginning construction:		
Letter of Chairman Willcox..... 336		
<b>Third Avenue Railroad Company:</b>		
Application for approval of agreement with the Kingsbridge Railway Company:		
Hearing Order No. 780..... 187		
Opinion of Commissioner Eustis..... 188		
Final Order, Case No. 780..... 190		
Extending time to file annual report:		
Extension Orders Nos. 748, 748g..... 270, 271		
Service on Third and Amsterdam avenue line:		
Hearing Order No. 404..... 492		
Opinion of Commissioner Maltbie..... 492		
Final Order No. 424..... 493		
Final Order No. 469..... 494		
Through routes and joint rates with the Forty-second Street, Manhattanville and St. Nicholas Avenue Railroad Company, and the Central Park, North and East River Railroad Company:		
Hearing Order No. 786..... 260		
Extension Order No. 793..... 260		
Hearing Order No. 796..... 261		
Service on Kingsbridge surface line:		
Hearing Order No. 435..... 495		
Opinion of Commissioner Maltbie..... 496		
Final Order No. 536..... 497		
Overhauling and repair of cars:		
Hearing Order No. 234..... 604		
Opinion of Commissioner Maltbie..... 605		
Final Order No. 260..... 606		
Rehearing Order No. 332..... 607		
Rehearing Order No. 341..... 608		

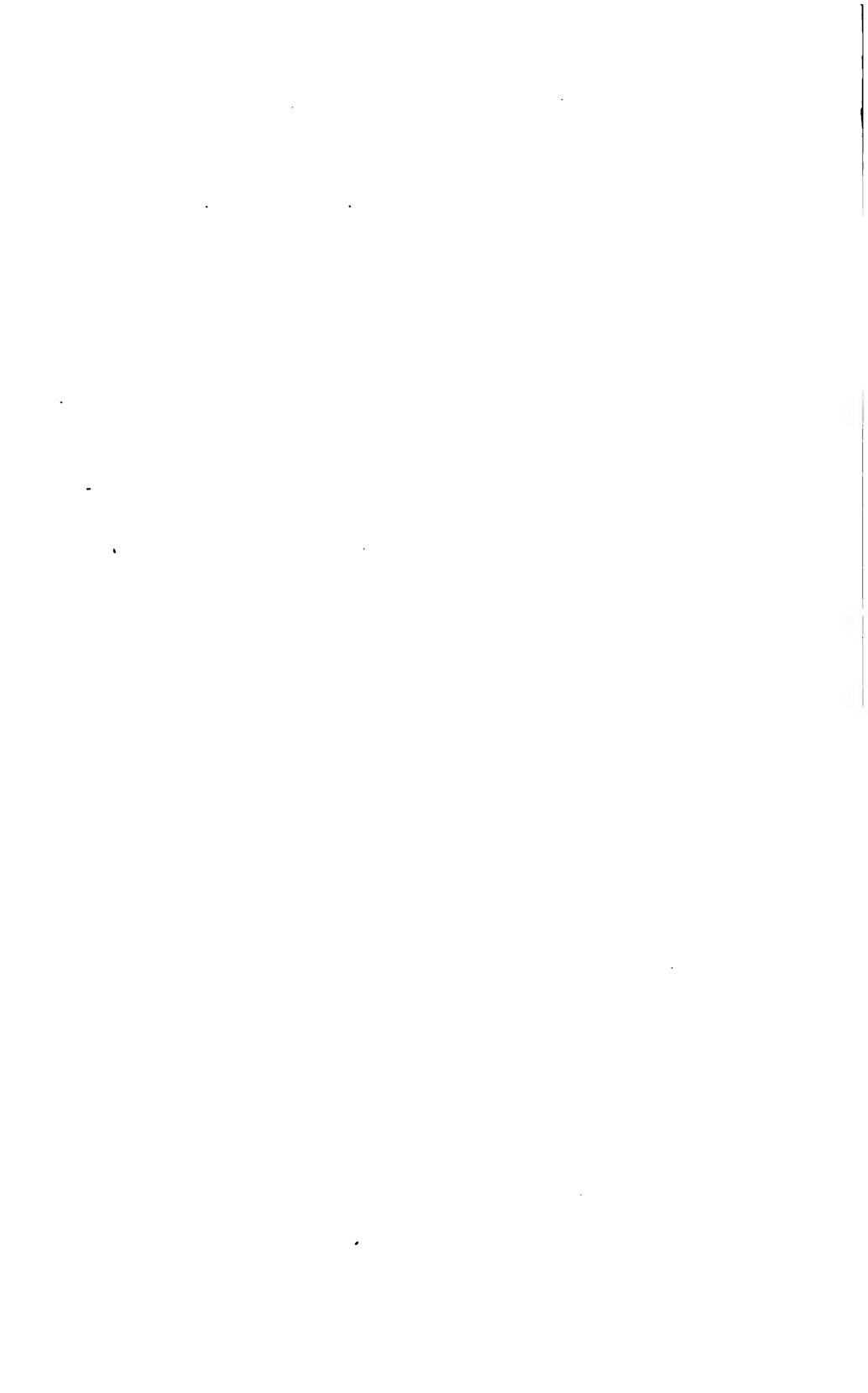
COMPANY.	SUBJECT.	PAGE.
<b>Third Avenue Railroad Company.</b>	—Continued:	
Overhauling and repair of cars.—Continued:		
Opinion of Commissioner Maltbie.....	608	
Final Order No. 365.....	609	
Opinion of Commissioner Maltbie.....	609	
Final Orders Nos. 403, 455.....	610	
Opinion of Counsel.....	611	
Extension Order No. 737.....	612	
Number and type of cars owned or operated on July 1, 1907, and number since purchased:		
Order No. 611.....	309	
Form to be used in reporting cars repaired and ready for inspection:		
Order No. 261.....	297	
Duty of receivers of, to file annual reports:		
Opinion of Counsel.....	727	
<b>Thirty-Fourth Street Crosstown Railway Company:</b>		
Extending time to file annual report:		
Extension Order No. 748a.....	270	
<b>Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748a.....	270	
<b>Union Railway Company of New York City:</b>		
Application for permission to construct an extension on Two Hundred and Thirtieth street:		
Hearing Order No. 769.....	183	
Application for approval of construction of street surface railroad crossing N. Y. C. & H. R. R. Co., Putnam division tracks at Two Hundred and Thirtieth street:		
Hearing Order No. 770.....	211	
Extending time to file information regarding motors, car bodies and car trucks:		
Extension Order No. 483.....	307	
Extending time to file information regarding cars, fenders, wheel- guards and brakes:		
Extension Order No. 486.....	309	
Extending time to file annual report:		
Extension Orders Nos. 748b, 748g.....	271	
Condition of tracks at the east end of McComb's Dam bridge:		
Hearing Order No. 240.....	627	
Through routes between New York city and Yonkers over Yonkers railroad:		
Complaint Order No. 776.....	262	
Hearing Order No. 850.....	262	
Service on Jerome avenue line to Woodlawn:		
Final Order No. 243.....	497	
Failure to operate cars between 1 a. m. and 5 a. m. on a twenty minute headway:		
Complaint Order No. 517.....	498	

COMPANY.	SUBJECT.	PAGE.
<b>Union Railway Company of New York City.—Continued:</b>		
Discontinuance of through service on White Plains avenue, and failure to exchange transfers with Westchester Electric Railroad Com- pany:		
Complaint Order No. 775.....	560	
Hearing Order No. 788.....	560	
Dismissal Order No. 824.....	560	
Failure to run cars of the White Plains avenue line north to the city line:		
Complaint Order No. 848.....	560	
Inadequate service on Fort Schuyler road, Westchester village to the Eastern boulevard, and proposed extension of line on Eastern boulevard:		
Complaint Order No. 323.....	499	
Hearing Order No. 368.....	499	
Final Order No. 474.....	499	
Extension Orders Nos. 580, 631.....	500	
Opinion of Counsel.....	501	
Rehearing Order No. 789.....	504	
Final Order No. 827.....	505	
Extension of Boscobel avenue line to the end of Washington Bridge:		
Complaint Order No. 237.....	630	
Extension Order No. 264.....	630	
Hearing Order No. 407.....	630	
Final Order No. 450.....	630	
Overhauling and repairing of cars:		
Hearing Order No. 222.....	615	
Final Order No. 336.....	617	
Extension Order No. 740.....	<u>617</u>	
<b>United Electric Light and Power Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b.....	277	
<b>United States Express Company:</b>		
Inadequate facilities for handling baggage between Staten Island and Manhattan:		
Complaint Order No. 461.....	563	
Opinion of Commissioner McCarroll.....	563	
<b>Van Brunt Street and Erie Basin Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748b.....	270	
<b>Westchester Electric Railroad Company:</b>		
Extending time to file annual report:		
Extension Order No. 748.....	270	

COMPANY.	SUBJECT.	PAGE.
<b>Westchester Electric Railroad Company.</b> —Continued:		
Failure to exchange transfers with Union Railway Company of New York city to provide through service between Two Hundred and Fortieth and Two Hundred and Twenty-ninth streets:		
Complaint Order No. 775 .....		560
Hearing Order No. 788 .....		560
Dismissal Order No. 824 .....		560
<b>Woodhaven Gas Light Company:</b>		
Extending time to file annual report:		
Extension Orders Nos. 812, 812b .....		277
<b>Yonkers Railroad Company:</b>		
Through routes between New York city and Yonkers over Union Railway:		
Complaint Order No. 776 .....		262
Hearing Order No. 850 .....		262
Vol. II.—26.		













3 2044 083 754 945